REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF

THE STATE OF MISSOURI

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Volume 31 MPSC 3d

January 1, 2021 – December 31, 2021

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Nancy Dippell

Reporter of Opinions

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JEFFERSON CITY, MISSOURI

(2023)

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, 2021 through December 31, 2021. It is published pursuant to the provisions of Section 386.170, et seq., Revised Statutes of Missouri, 2016, as amended.

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

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

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THE COMMISSION

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

Ryan A. Silvey	William P. Kenney
Scott Rupp	Maida Coleman
Jason R. Holsman	Glen Kolkmeyer

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Deputy Chief Regulatory Law Judge

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CHARLES HATCHER
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Regulatory Law Judge

ROSS KEELING
Regulatory Law Judge

Additional Regulatory Law Judges who served during all or part of the period covered by this volume

Jana Jacobs
Morris Woodruff

Paul Graham

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Spire Missouri, Inc. d/b/a Spire (East) Purchased Gas Adjustment (PGA) Tariff Filing	)))	**File No. GR-2021-0127**
In the Matter of Spire Missouri, Inc. d/b/a Spire (West) Purchased Gas Adjustment (PGA) Tariff Filing	)))	**File No. GR-2021-0128**

ORDER DENYING MOTION TO ESTABLISH A PROCEDURAL SCHEDULE

EVIDENCE, PRACTICE AND PROCEDURE

§29. Discovery

Spire Missouri, Inc. proposed that the Commission instruct parties other than Staff to defer submitting data requests until after Staff completed its Actual Cost Adjustment audit. The Commission did not restrict discovery citing Missouri Rule of Civil Procedure 56.01 – "All parties have discovery rights in a case that are only restricted by relevance and privilege."

GAS

§17.1. Purchased Gas Adjustment (PGA)

The Commission denied a motion to establish a procedural schedule filed by the Environmental Defense Fund, Midwest Energy Consumers Group, Consumers Council of Missouri, and the Office of the Public Counsel. That motion questioned the prudence of Spire East's affiliate transactions with Spire STL Pipeline.

§17.1. Purchased Gas Adjustment (PGA)

The Commission determined that, because of the large number of factors that Staff needed to investigate prior to filing a report and recommendation, and because all parties and the Commission would benefit from having a Staff report and recommendation, the Commission would not establish a procedural schedule until after the submission of Staff's report and recommendation.

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 January, 2021.

In the Matter of Spire Missouri, Inc. d/b/a Spire (East) Purchased Gas Adjustment (PGA) Tariff Filing	)))	**File No. GR-2021-0127**
In the Matter of Spire Missouri, Inc. d/b/a Spire (West) Purchased Gas Adjustment (PGA) Tariff Filing	)))	**File No. GR-2021-0128**

ORDER DENYING MOTION TO ESTABLISH A PROCEDURAL SCHEDULE

Issue Date: January 6, 2021 Effective Date: January 6, 2021

Spire Missouri Inc. d/b/a Spire filed tariff sheets on October 30, 2020, to reflect changes in its Purchased Gas Adjustment (PGA) clause and Actual Cost Adjustment (ACA) for its Spire Missouri East Operating Unit, and Spire Missouri West Operating Unit. The Environmental Defense Fund, Midwest Energy Consumers Group, Consumers Council of Missouri (collectively "Intervenors") and the Office of the Public Counsel (OPC) subsequently filed comments about Spire's filing and a motion to establish a procedural schedule. The Intervenors and OPC's comments expressed concern with the prudency of Spire East's affiliate transactions with Spire STL Pipeline. Their motion requested that the Commission only allow the tariffs go into effect subject to refund and that the Commission establish a procedural schedule consistent with a contested proceeding. On November 12, 2020, the Commission approved Spire's PGA tariffs to become effective on November 16, 2020, subject to refund, and ordered the Commission's Staff (Staff) to

file its report and recommendation about Spire's ACA on December 15, 2021.[1] The Commission also ordered Staff and Spire to respond to the Intervenors and OPC's filings, and recommend how best to address the prudence of the Spire STL Pipeline transaction within this ACA file.

As ordered, Staff and Spire filed responses to the Intervenors and OPC's motion requesting a procedural schedule and the Commission's question about how to address the Spire STL Pipeline transaction. The Intervenors and OPC filed replies to those responses. The relevant positions of Staff, Spire, the Intervenors and OPC are summarized below.

Staff explained that it has not begun conducting necessary discovery for its report and recommendation regarding Spire's gas purchasing decisions made during 2019-2020, and will be issuing its standard package of 110 data requests each to Spire East and West in January 2021. Staff states that the volume and complexity of the supply decisions made by Spire during the ACA period require it to have sufficient time to conduct thorough discovery, process its reports, and develop its recommendations. Staff says that its Procurement Analysis Department performs a year-long examination for all gas distribution companies regulated by the Commission, and this encompasses the Procurement Analysis Department's main workload and assignment. Since Staff's ACA report and recommendation are not typically due for a year, and because the review it does is extensive, Staff believes it is premature for the Commission to order a procedural schedule. Staff states there will be sufficient time to raise issues after Staff completes its report and recommendation.

[1] The Commission typically orders Staff to file an ACA recommendation approximately one year after the order approving the PGA tariff.

Spire's response states that it understands the Intervenors want to obtain additional information concerning the PGA costs associated with Spire STL Pipeline, but it agrees with Staff and believes that establishing a procedural schedule now is premature and inconsistent with Commission practice in these cases. Spire believes that waiting until Staff's report is complete will provide the Commission and parties with a better idea of any areas of concern requiring additional inquiry and a procedural schedule.

The Intervenors and OPC assert that areas of concern are known and contested issues have already been raised. They state that allowing them discovery rights at this time might enhance Staff's review with additional resources and perspectives conducting analyses. They assert that denying them access to discovery for a year and conducting analysis "behind closed doors" discriminates against them and favors Spire. They also state that if the final order results in a decrease, lengthening the process will deprive ratepayers of a refund at a challenging time for many customers. The Intervenors and OPC again request that the Commission establish procedures consistent with a contested proceeding.

The Commission determined in Spire's most recent rate case that a future ACA proceeding was the appropriate proceeding to address the Spire STL Pipeline transaction.[2] Staff's ACA memorandum in File No. GR-2019-0119 notes that the affiliated pipeline and transactions between Spire East and Spire STL Pipeline would be examined as part of the 2019-2020 ACA period review. Therefore, this ACA review is the appropriate proceeding to address Spire East's affiliate transaction with Spire STL Pipeline. However,

[2] File No. GR-2017-0215, *Amended Report and Order,* issued March 7, 2018 at page 57 states "If Spire STL Pipeline's pipeline is approved by the FERC, and if Spire Missouri enters into a transportation agreement with that affiliated pipeline, the Commission would review the prudence of that decision in a future ACA review case."

the prudence of the Spire STL Pipeline transaction is not the only issue before the Commission. This is an ACA proceeding. As Staff stated in its response, “many factors go into that calculation, including over/under recovery, hedging, gas costs, pipeline costs, storage costs, and demand charges.” All of those factors make up the ACA filing, and ultimately all of those result in a single amount for Commission approval. The amounts approved in Spire’s PGA by the Commission are subject to refund, any rush to arrive at potential refunds is outweighed by the need to determine the correct ACA amount, so that rates are just and reasonable.

The Commission agrees with Staff and Spire that it is too early in this proceeding to establish a procedural schedule. Staff’s discovery process has yet to commence, and the Commission typically allows a year for Staff to complete its report and recommendation. This is not an arbitrary timetable, but one based upon Staff’s experience with how long it takes to conduct this sort of extensive investigation and analysis. Staff’s report aids the Commission in making a determination as to the correct ACA amount, but it also aids the parties who use Staff’s report and recommendation to support or contrast their positions.

The Commission’s discovery rule, 20 CSR 4240-2.090, sets out how data requests are used to obtain information. Staff will be issuing 110 data requests each to Spire East and West. Given the numerous data requests being issued, and the extensive and time-consuming analysis conducted by Staff, the Commission finds that the approximate one-year time period to process all of Spire’s gas supply decisions made during the 2019-2020 ACA period prior to setting a procedural schedule in this case is necessary.

Additionally, Section 536.062(3) RSMo, provides: “Reasonable opportunity shall be given for the preparation and presentation of evidence bearing on any issue raised or

decided or relief sought or granted." The one-year time frame in which Staff conducts its investigation is a reasonable amount of preparation, and would be even if this case was uncontested.

Therefore, the Commission will wait to establish a procedural schedule until after the parties have had an opportunity to examine Staff's report and recommendation.

Spire suggests that Staff be allowed to lead the discovery process. Spire says it requires substantial time and effort on its behalf to respond to Staff's data requests and additional numerous duplicative data requests will only distract it from providing timely and responsive information to the more relevant data requests submitted by Staff. Spire states that the Commission could avoid this by instructing other parties to defer submitting data requests until after Staff completes its audit. Spire states that it would be willing to discuss a negotiated discovery process with the Intervenors that would provide Staff the opportunity to lead the discovery process initially, with additional data requests from Intervenors stayed until such time as Staff's initial discovery is complete. Spire cites no authority for its proposition, and has not requested a protective order to limit discovery. All parties have discovery rights in a case that are only restricted by relevance and privilege.[3] If Spire wishes to negotiate with the parties as to an agreed upon discovery process to avoid duplicative data requests, it is free to do so, but since the Commission is not establishing a procedural schedule at this time, it will also not restrict the discovery process.

THE COMMISSION ORDERS THAT:

1. The motion to establish a procedural schedule filed by the Intervenors and OPC is denied.

[3] Missouri Rules of Civil Procedure, Rule 56.01.

2. This order shall become effective when issued.

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 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 REQUEST FOR EMERGENCY RULE

SERVICE

§4. Abandonment, discontinuance and refusal of service
The Commission found that the programs put in place by the utilities to avoid disconnections during the pandemic should be allowed an opportunity to work and have been working.

§4. Abandonment, discontinuance and refusal of service
The Commission found that an emergency rule placing a moratorium on disconnections could have the unintended consequence of causing financial distress on some municipalities.

§4. Abandonment, discontinuance and refusal of service
The Commission found that a blanket moratorium for all regulated water utilities, no matter their size, may be too broad.

§4. Abandonment, discontinuance and refusal of service
The Commission found that the rulemaking requested by Consumers Council did not meet the criteria for the issuance of an emergency rule. The Commission found that an emergency rule imposing a temporary moratorium on residential disconnections for regulated electric, gas, and water service in the state of Missouri was not necessary to protect the public from an immediate danger and such emergency action not been 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. Therefore, the Commission denied the request to promulgate an emergency rule.

§31. Rules and regulations
The Commission found that the rulemaking requested by Consumers Council did not meet the criteria for the issuance of an emergency rule. The Commission found that an emergency rule imposing a temporary moratorium on residential disconnections for regulated electric, gas, and water service in the state of Missouri was not necessary to protect the public from an immediate danger and such emergency action not been

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. Therefore, the Commission denied the request to promulgate an emergency rule.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 13th day of January, 2021.

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 REQUEST FOR EMERGENCY RULE

Issue Date: January 13, 2021 Effective Date: January 23, 2021

On December 16, 2020, the Commission issued its *Order Denying Motion,* which denied a motion filed by Consumer Council of Missouri (Consumers Council) that asked the Commission to issue an emergency order placing a moratorium on involuntary residential disconnections by water, electric, and gas corporations and a waiver of late fees through at least March 31, 2021. Consumers Council filed an *Application for Rehearing and/or Reconsideration* on December 26, 2020. On January 4, 2021, a group of utilities[1] filed a response in opposition to Consumers Council's request for rehearing.

In addition to asking for rehearing of the order denying its motion, Consumers Council's application requests the Commission issue an emergency rule that would temporarily prevent electric, natural gas, and water disconnections through

[1] Union Electric Company d/b/a Ameren Missouri, Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro, Evergy Missouri West, Inc. d/b/a Evergy Missouri West, Spire Missouri, Inc., Missouri-American Water Company, and Liberty Utilities (The Empire District Electric Company, The Empire District Gas Company, Liberty Utilities (Missouri Water) LLC, and Liberty Utilities (Midstates Natural Gas) Corp.).

March 31, 2021, because of the COVID-19 pandemic. Under Section 536.025.1, RSMo, 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.

The Commission finds that the rulemaking requested by Consumer Council does not meet the criteria for the issuance of an emergency rule. At the beginning of the pandemic in this state, the large Commission-regulated utilities[2] 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. These utilities reported to the Commission that most of their repayment and financial assistance programs were still available and were funded. Additionally, stopping the regular disconnection processes may unintentionally harm customers by making them ineligible to receive financial assistance from the Low Income Home Energy Assistance Program (LIHEAP) because no disconnection was imminent. The utilities stated that customers often did not seek help with payment plans and financial assistance until prompted to do so by receiving a disconnection notice.

[2] 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).

Further, placing a moratorium on disconnections may leave customers with insurmountable arrearages when the moratorium expires.

The Commission finds that the programs put in place by the utilities to avoid disconnections during the pandemic should be allowed an opportunity to work and have been working. The CSWR-Affiliated Utilities[3] reported that it had very few customers requesting extended payment plans at the end of its voluntary moratorium and had not involuntarily disconnected any customers during the pandemic. Ameren Missouri reported that its current programs are working as the number of disconnections in August 2020 were 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 was 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.

Additionally, the Commission's Cold Weather Rule[4] is in effect from November 1 to March 31 for electric and gas service. This will also 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.

[3] 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").
[4] 20 CSR 4240-13.055(6).

The Commission also finds that an emergency rule placing a moratorium on disconnections could have the unintended consequence of causing financial distress on some municipalities, such as City of St. Joseph and the City of Jefferson, because they 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.

Further, a blanket moratorium for all regulated water utilities no matter their size, may be too broad. The Commission Staff indicated that such a moratorium should not be applied to the small systems and the CSWR-affiliated utilities provided information that no such moratorium was necessary for its systems.

Based on Consumers Council's motion and its application for rehearing and the responses of Staff, the utilities, and other entities in support of and in opposition to the motion, the Commission finds that an emergency rule imposing a temporary moratorium on residential disconnections for regulated electric, gas, and water service in the state of Missouri is not necessary to protect the public from an immediate danger. Further, the Commission finds that such emergency action has not been 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. Therefore, the Commission finds that the criteria for promulgating an emergency rule has not been met and that request is denied.

THE COMMISSION ORDERS THAT:

1. The request for an emergency rule is denied.

2. This order is effective January 23, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Senior 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 an Accounting Authority Order Allowing the Companies to Record and Preserve Costs Related to COVID-19 Expenses	)))))))	**File No. EU-2022-0350**

REPORT AND ORDER

ACCOUNTING

§4. Jurisdiction and powers of the State Commission
§8. Uniform accounts and rules
As provided by Section 393.140, RSMo, the Commission has authority, in its discretion, to prescribe the methods used by electrical corporations to keep accounts, records and books.

§42. Accounting Authority orders
The Commission found that costs and savings directly associated with the pandemic were eligible for deferral under an accounting authority order so that those costs and savings could be considered in a future rate case.

§42. Accounting Authority orders
The Commission found that the limited exceptions to ordinary accounting practices provided by its order were reasonable given the uncertainty caused by the COVID-19 pandemic. Therefore, the Commission granted, in part, Evergy's application for an accounting authority order.

§42. Accounting Authority orders
The Commission found it should not extend the scope of the accounting authority order proceeding to require particular measures as a condition of deferral accounting.

§42. Accounting Authority orders
The Commission found that reporting associated with an accounting authority order should be related to the matters addressed by the accounting order.

ELECTRIC

§27. Accounting

In addition to its authority to prescribe uniform accounting methods, the Commission is authorized by Section 393.140(4) to order the forms of accounts, records and memoranda to be kept by electrical corporations, and is authorized by Section 393.140(8) to require electrical corporations to answer Commission inquiries and file specific reports.

§43. Accounting Authority orders

The Commission found that costs and savings directly associated with the pandemic were eligible for deferral under an accounting authority order so that those costs and savings could be considered in a future rate case.

§43. Accounting Authority orders

The Commission found that the limited exceptions to ordinary accounting practices provided by its order were reasonable given the uncertainty caused by the COVID-19 pandemic. Therefore, the Commission granted, in part, Evergy's application for an accounting authority order.

§43. Accounting Authority orders

The Commission is not bound by stare decisis and determines each accounting authority order application on its distinct facts.

§43. Accounting Authority orders

The Commission found it should not extend the scope of the accounting authority order proceeding to require particular measures as a condition of deferral accounting.

EVIDENCE, PRACTICE AND PROCEDURE

§30. Settlement procedures

Where an agreement was reached only by some of the parties and timely objection to approval of the agreement were made, the Commission must make its own findings on each issue necessary to address the application.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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 an Accounting Authority Order Allowing the Companies to Record and Preserve Costs Related to COVID-19 Expenses	)))))))	**File No. EU-2020-0350**

REPORT AND ORDER

Issue Date: January 13, 2021

Effective Date: January 23, 2021

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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 an Accounting Authority Order Allowing the Companies to Record and Preserve Costs Related to COVID-19 Expenses	)))))))	**File No. EU-2020-0350**

APPEARANCES

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Regulatory Law Judge: **Jana C. Jacobs**

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REPORT AND ORDER

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

PROCEDURAL HISTORY

On May 6, 2020, Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively "Evergy") applied for an accounting authority order (AAO) to govern costs and financial impacts associated with the COVID-19 pandemic.[1] The application asked the Commission to allow Evergy to defer such costs in a regulatory asset, beginning on March 1, 2020, less costs avoided also related to COVID-19.[2] Evergy requested a Commission order in time to permit the company to reflect the requested deferral in its 2020 books, which it indicated close in late January or early February 2021.[3] In addition, Evergy requested waiver of the 60-day notice requirement under Commission Rule 20 CSR 4240-4.017.

[1] The COVID-19 pandemic is discussed in greater detail in Issue A below. The term "COVID-19" may describe both the virus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), and the illness the virus causes. *COVID-19, SARS-CoV-2,* Merriam-Webster.com (Dec. 29, 2020) (retrieved at https://www.merriam-webster.com).

[2] *Application of Evergy Metro, Inc. and Evergy Missouri West, Inc. for Accounting Authority Order Related to COVID-19 Costs and Financial Impacts* (Evergy Application), p. 12-14 (May 6, 2020). Documents filed in this case, File No. EU-2020-0350, are cited in this order by document title and filing date on first reference, with abbreviated citations on subsequent reference. A file number is specified only for documents filed in other Commission cases.

[3] *Evergy Response to Commission Order*, p. 1-2 (June 26, 2020).

The Commission issued notice of the application and granted intervention requests from Midwest Energy Consumers' Group (MECG), Renew Missouri Advocates d/b/a Renew Missouri, Sierra Club, Union Electric Company d/b/a Ameren Missouri, Spire Missouri Inc., Missouri-American Water Company (MAWC), Missouri Industrial Energy Consumers (MIEC), and National Housing Trust (NHT). In addition, the Staff of the Public Service Commission (Staff) and the Office of the Public Counsel (OPC) are parties to this proceeding.[4]

On July 1, 2020, the Commission issued a procedural schedule based on Evergy's unopposed proposal and set a two-day hearing to begin on September 30, 2020. The parties filed direct, rebuttal and sur-rebuttal testimony. On September 23, 2020, the Commission denied Evergy's motion to file sur-surrebuttal testimony.

At Evergy's request, the Commission continued the hearing to allow the parties to discuss settlement. On October 8, 2020, Evergy, Staff, MIEC, MECG and Sierra Club submitted a *Non-Unanimous Stipulation and Agreement* (Agreement) to resolve Evergy's application for an AAO. On October 15, 2020, OPC and NHT filed objections to the Agreement, and NHT requested a hearing.

Under Commission rule, a "nonunanimous agreement" subject to objection is "merely a position of the signatory parties to the stipulated position."[5] As the rule provides, no party is bound by such an agreement and "all issues shall remain for determination after hearing."[6]

[4] Section 386.710.1(2), RSMo (2016) (OPC authority to represent the public in any proceeding before the Commission); Commission Rule 20 CSR 4240-2.010 (making Staff and OPC parties to all proceedings). All citations to Missouri statute are to the Revised Statutes of Missouri (2016), unless otherwise noted.
[5] 20 CSR 4240-2.115(2)(D).
[6] 20 CSR 4240-2.115(2)(D).

The Commission conducted an evidentiary hearing on November 12-13, 2020.[7] All signatories to the Agreement appeared at hearing and requested the Commission approve Evergy's application for an AAO and issue an order consistent with the terms of the Agreement.

During the hearing, the Commission took official notice on the record of additional matters before the Commission that include relevant materials. These matters include File No. AW-2020-0356, the Commission's working case on best practices for recovery of past-due payments after the COVID-19 pandemic, and File No. EO-2020-0383, which concerns Evergy's application to implement programs in response to COVID-19, potentially subject to deferral under an AAO.[8] In addition, the Commission took official notice on the record of two other cases concerning applications for AAOs related to COVID-19 impacts: File No. GU-2020-0376, concerning Spire Missouri Inc.'s application, and File No. WU-2020-0417, concerning Missouri-American Water Company's application.[9]

The parties filed initial briefs on December 4, 2020, and reply briefs on December 14, 2020.

[7] MAWC, Ameren Missouri and Spire Missouri Inc. were excused and did not appear for hearing. With the consent of the parties, the hearing was conducted by telephone and video conference.
[8] Transcript Vol. 2 at p. 52 (Nov. 12, 2020).
[9] Transcript Vol. 3 at p. 319 (Nov. 13, 2020).

ISSUES[10]

A. Are the costs and financial impacts to Evergy associated with the COVID-19 pandemic eligible for treatment under an accounting authority order?

Findings of Fact

1. Evergy Metro, Inc. d/b/a Evergy Missouri Metro is a Missouri corporation and is an "electrical corporation" and "public utility" as defined by Section 386.020, RSMo (Cum. Supp. 2020), and is authorized to provide electric service to portions of Missouri.[11]

2. Evergy Missouri Metro is engaged in the generation, transmission, distribution and sale of electricity in western Missouri and eastern Kansas and operates primarily in the Kansas City metropolitan area.[12]

3. Evergy Missouri West, Inc. d/b/a Evergy Missouri West is a Delaware corporation and is an "electrical corporation" and "public utility" as defined by 386.020, RSMo (Cum. Supp. 2020), and is authorized to provide electric service to portions of Missouri.[13]

4. Evergy Missouri West is engaged in the generation, transmission, distribution and sale of electricity in western Missouri, including suburban Kansas City, St. Joseph, and surrounding counties.[14]

5. Evergy Missouri Metro and Evergy Missouri West are wholly owned subsidiaries of Evergy, Inc.[15]

6. Rates for Evergy Missouri Metro and Evergy Missouri West were most

[10] The parties formally identified issues posed by Evergy's application. *List of Issues, List and Order of Witnesses, Order of Opening Statements, and Order of Cross-Examination*, p. 1-3 (Sept. 9, 2020). The parties' issues 1, 1(a) and 2 are addressed in this order's Issue A. The parties' Issue 3, including all sub-issues identified by the parties, is addressed in this order's Issue B. Issue 4 is addressed in this order's Issue C. Issue 5 is addressed in this order's Issue D. Issues 6, 7 and 8 are addressed in this order's Issue E.
[11] Evergy Application, ¶1 (May 6, 2020).
[12] Evergy Application, ¶1.
[13] Evergy Application, ¶3.
[14] Evergy Application, ¶3.
[15] Evergy Application, ¶5.

recently established by the Commission in File Nos. ER-2018-0145 and ER-2018-0146, respectively.[16] The proceedings in File No. ER-2018-0145 established allocation of items between Kansas and Missouri.[17]

7. Evergy's rates are frozen through December 6, 2021, based on Evergy Missouri Metro's and Evergy Missouri West's election under Section 393.1400 for plant-in-service accounting.[18]

8. Evergy intends to file general rate cases in January 2022.[19]

9. Accounting standards for regulated utilities are governed by the Commission's rules.[20] In general, applicable standards require that items be booked in the period in which they occur.[21]

10. Through the use of a regulatory asset or liability, an accounting authority order (AAO) may permit or require a company to defer items from one period to a subsequent period.[22] The deferred items may be reflected in rates set in a future rate case.[23]

11. The ratemaking process is designed to allow recovery from customers for prudently incurred expenses necessary to provide service.[24] Expenses arising from extraordinary events, such as major storms or floods, may not be anticipated by or reflected in rates.[25]

12. AAOs may be used in the Commission's discretion to account for costs and

[16] Transcript Vol. 2 at p. 217.
[17] Ex. 300: Meyer Rebuttal, p. 23.
[18] Ex. 5: Klote Surrebuttal, p. 7; Ex. 9: Ives Surrebuttal, p. 32.
[19] Ex. 9: Ives Surrebuttal, p. 32.
[20] Ex. 200: Schallenberg Rebuttal, p. 2-3; Ex. 300: Meyer Rebuttal, p. 3.
[21] Ex. 200: Schallenberg Rebuttal, p. 3-4.
[22] Ex. 300: Meyer Rebuttal, p. 2.
[23] Ex. 100: Bolin Rebuttal, p. 4; Ex. 200: Schallenberg Rebuttal, p. 3; Ex. 300: Meyer Rebuttal, p. 3.
[24] Ex. 100: Bolin Rebuttal, p. 8.
[25] Ex. 100: Bolin Rebuttal, p. 8.

savings associated with extraordinary events.[26] Natural disasters, such as destructive storms and floods, are often referenced as examples of such extraordinary events.[27] Such events may require unanticipated costs to enable utilities to provide safe and reliable service.[28]

13. In addition to natural disasters,[29] the Commission has authorized accounting deferral for costs and savings associated with other types of unusual events. Such extraordinary items and events have included, for example, expenses associated with "Y2K" software problems,[30] heightened security costs required by the September 11 attacks,[31] and significant cost savings arising from a plant closure.[32]

14. A Commission decision to allow an AAO does not guarantee deferred items will be included in rates in a future ratemaking case.[33] In this case, Evergy seeks authority to accumulate and defer as a regulatory asset all extraordinary costs and financial impacts incurred as a result of the COVID-19 pandemic.[34] Such an AAO would allow Evergy to seek recovery of deferred costs in a future rate case proceeding.[35]

15. The COVID-19 pandemic emerged in the United States and Missouri in

[26] Ex. 100: Bolin Rebuttal, p. 4, 8.
[27] Ex. 7: Ives Direct, p. 5; Ex. 100: Bolin Rebuttal, p. 4; Ex. 300: Meyer Rebuttal, p. 3.
[28] Ex. 100: Bolin Rebuttal, p. 8.
[29] For examples of contested proceedings involving natural disasters *see, e.g., In re Union Elec. Co. d/b/a Ameren Missouri for Issuance of an AAO*, *Report and Order*, File No. EU-2012-0027 (Nov. 26, 2013) (ice storm); *In re Application of S. Union Co. for Issuance of an Accounting Authority Order*, *Report and Order*, File No. GU-2011-0392 (Jan. 25, 2012) (Joplin tornado). Many other such AAO applications have been resolved by unanimous agreement and are not noted here.
[30] *In re the Application of Mo. Gas Energy for Issuance of an AAO Relating to Year 2000 Compliance*, *Report and Order*, File No. GO-99-258 (March 2, 2000).
[31] *In re Joint Application of Missouri-American Water Co., St. Louis Water Co, and Jefferson City Water Works Co. for Accounting Authority Order Relating to Security Costs*, *Report and Order on Remand*, File No. WO-2002-273 (Nov. 10, 2004).
[32] *Office of the Pub. Counsel v. KCP&L Greater Mo. Operations Co., Report and Order*, File No. EC-2019-0200 (Oct. 17, 2019).
[33] Ex. 4: Klote Direct, p. 10; Ex. 7: Ives Direct, p. 4; Ex. 100: Bolin Rebuttal, p. 5, 8; Ex. 300: Meyer Rebuttal, p. 22.
[34] Evergy Application, p. 1, 12-13.
[35] Evergy Application, p. 1, 13.

March 2020.[36]

16. The term "COVID-19" may refer to both the virus and "coronavirus disease 2019," the illness caused by the virus.[37] COVID-19 is a contagious disease that is transmitted from person to person.[38]

17. Witness testimony and party filings in this case include numerous uncontested references to official action taken by federal, state and local authorities in response to the pandemic. In addition, testimony includes uncontested statements and observations about the consequences of the pandemic in regard to the economy and aspects of daily life. Many of these references are cited in the Commission's findings.

18. In addition, the Commission observes that the emergence and scope of the COVID-19 pandemic is a matter of common knowledge, known to the Commission and all parties. As such, the Commission takes official notice of the emergence of the COVID-19 pandemic in March 2020 and the resulting recommendation and/or requirement by federal, state and local officials that individuals avoid close contact outside their households to avoid spreading the virus.

19. When direct testimony was filed in this case in July 2020, deaths caused by the virus in the United States totaled more than 129,000, with more than 1,000 deaths in Missouri.[39] As of the filing of reply briefs on December 14, 2020, COVID-19 deaths in the United States were approaching 300,000, including more than 4,500 in Missouri.[40]

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[36] Proclamation No. 9994, 85 Fed. Reg. 15,337 (March 13, 2020) cited by, e.g., *Position Statement of Evergy Missouri Metro and Evergy Missouri West*, p. 1 (Sept. 16, 2020); Ex. 7: Ives Direct, p. 6.
[37] *COVID-19, SARS-CoV-2,* Merriam-Webster.com (Dec. 29, 2020) (retrieved at https://www.merriam-webster.com).
[38] Executive Order 20-04 (March 18, 2020), cited by *Corrected Staff Report*, File No. AW-2020-0356 (Aug. 4, 2020). Executive orders are published at the website of the Missouri Secretary of State, https://www.sos.mo.gov/library/reference/orders/2020.
[39] Ex. 7: Ives Direct, p. 6 (citing U.S. Centers for Disease Control and Prevention (CDC) reports); Ex. 1000: Colton Rebuttal, p. 8 (citing Missouri state website at https://mophep.map.arcgis.com).
[40] *Reply Brief of Evergy Missouri Metro and Evergy Missouri West*, p. 4 (Dec. 14, 2020) (citing CDC reports at https://covid.cdc.gov/covid-data-tracker).

20. A presidential proclamation issued on March 13, 2020, announced that the spread of COVID-19, a "novel," or "new" "coronavirus" constituted a "national emergency," as of March 1, 2020.[41] The proclamation cited the World Health Organization's announcement that the COVID-19 outbreak constituted a "pandemic," with rising rates of infection observed in locations around the world.[42]

21. On March 13, 2020, Gov. Michael Parson issued an executive order confirming positive cases of COVID-19 in Missouri, warning of the "serious health risk" posed by the "highly contagious" disease and announcing a state of emergency.[43] In another order, the Governor authorized state agencies to take emergency action to preserve public health.[44]

22. Pursuant to the Governor's orders, in April 2020, the Missouri Department of Health and Senior Services issued orders instructing Missourians to practice social distancing and avoid leaving their homes for any purposes other than work, worship, or other basic needs.[45]

23. The pandemic has resulted in "reduced economic activity," and an economic recession[46] with varying impacts among different populations.[47] Stay-at-home orders, social distancing recommendations and reduced demand have resulted in lost

[41] Proclamation No. 9994, 85 Fed. Reg. 15,337 (March 13, 2020).
[42] Proclamation No. 9994, 85 Fed. Reg. 15,337 (referencing WHO director's speech announcing COVID-19 "can be characterized as a pandemic")(accessed Dec. 31, 2020, at https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020).
[43]Executive Order 20-02 (March 13, 2020).
[44]Executive Order 20-04 (March 18, 2020).
[45] Evergy Position Statement, p. 2 (citing April 3 and 27, 2020, Department of Health and Senior Services orders)(accessed Dec. 30, 2020, at https://governor.mo.gov/priorities/stay-home-order, and https://governor.mo.gov/sites/gov/files/media/pdf/2020/04/Economic-Reopening-Phase-1.pdf).
[46] Ex. 9: Ives Surrebuttal, p. 8, 26 and Attachment: DRI-2, *Short-Term Energy Outlook,* U.S. Energy Information Administration (August 2020); Ex. 202: Marke Rebuttal, p. 2, 6, 7, 8, 16, 18 (page citations to Marke Rebuttal are to the page numbers of testimony, as marked, unless otherwise noted); Ex. 200: Schallenberg Rebuttal, p. 9; Transcript Vol. 3 at p. 275-77.
[47] Ex. 1000: Colton Rebuttal, p. 11-17.

income for many workers and small businesses.[48]

24. Missouri's unemployment rate increased to 14% in Spring 2020.[49] Bankruptcies in the United States reached a 10-year high in August 2020.[50] Also in August, OPC's chief economist advised the Commission that Missouri was experiencing "record levels of unemployment."[51]

25. Evergy's Missouri service area has been subject to statewide and local measures, including initial stay-at-home orders, the closure of schools and government offices and intermittent restrictions on businesses.[52]

26. Major businesses and manufacturers in Evergy's service area shut down in Spring 2020, while K-12 schools and institutions of higher learning closed buildings and campuses.[53] Retail, sport and entertainment venues in the Kansas City area closed during stay-at-home orders.[54]

27. Economic and other activity did not return to normal after initial stay-at-home orders expired.[55] Many schools in Evergy's service area did not reopen until after Labor Day.[56] During the pandemic, unemployment levels in the Kansas City area have ranged from 7% to 10.5%.[57]

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[48] Ex. 3: Caisley Direct, p. 5; Ex. 202: Marke Direct, p. 16.
[49] Evergy Application, ¶ 14.
[50] Ex. 202: Marke Rebuttal, p. 2, n.1 (citing *S&P Global* article).
[51] Ex. 203: Marke Surrebuttal, Attachment: GM-S-1, Memorandum filed in File No. AW-2020-0356 (Aug. 31, 2020).
[52] Ex. 7: Ives Direct, Schedule DRI-1: City of Kansas City, Missouri, Ninth Amended Order 20-01 (June 26, 2020); Evergy Application, ¶ 13 (citing City of Kansas City, Missouri, Fourth Amended Order 20-01 (April 30, 2020), City of St. Joseph, Fourth Amended Declaration and Order (April 30, 2020)); *Evergy Initial Post-Hearing Brief*, p. 4 n.7, Ex. A: City of Kansas City, Missouri, 11th Amended Order 20-01 (Nov. 16, 2020), Ex. B: Jackson County, Missouri, Amended Order (Nov. 18, 2020) (Brief filed Dec. 4, 2020). No objection has been lodged to Evergy's request the Commission take official notice of the November orders filed with its initial brief on Dec. 4, 2020. OPC's reply brief does not question the authenticity of the orders. *Reply Brief of the Office of Public Counsel*, p. 7 (Dec. 14, 2020).
[53] Evergy Application, ¶ 12.
[54] Evergy Application, ¶ 12.
[55] Ex. 7: Ives Direct, p. 7-9.
[56] Ex. 9: Ives Surrebuttal, p. 17.
[57] Ex. 9: Ives Surrebuttal, p. 25 (citing U.S. Bureau of Labor Statistics reports).

28. While reopened businesses alleviated some concerns in Fall 2020, a resurgence of cases and the possibility of future stay-at-home orders persisted.[58]

29. Local governments in Evergy's service area continued to impose or tighten restrictions in response to the pandemic as of the date of hearing and during post-hearing briefing in this case.[59]

30. The changes in daily life appear to have had significant financial and operating impacts on utilities.[60]

31. Both the number of utility customers on payment plans and total past-due amounts owed by customers have increased statewide during the pandemic.[61]

32. In response to the "COVID-19 pandemic emergency," the Commission opened a working case in File No. AW-2020-0356 in May 2020 to address the anticipated increase in past-due accounts among vulnerable Missourians.[62]

33. Evergy instituted a moratorium on non-payment disconnections on March 13, 2020, in response to the mandatory "quarantine," or stay-at-home orders, in Evergy's service area.[63] The moratorium continued through July 15, 2020.[64]

34. In May 2020, Evergy pledged $2.2 million in charitable contributions, divided between its Missouri and Kansas service areas, including assistance to nonprofit agencies and the Dollar-Aide program to assist customers with utility bills.[65] Evergy does

[58] Transcript Vol. 2 at p. 94-95.
[59] City of Kansas City, Missouri, 11th Amended Order 20-01 (requiring masks, imposing occupancy limits and restricting gatherings to 10 or fewer people) (Nov. 16, 2020) and Jackson County, Missouri, Amended Safer-At-Home Plan (restoring restrictions due to "uncontrolled spread of COVID-19")(Nov. 18, 2020), attached as exhibits to *Initial Post-Hearing Brief of Evergy Missouri Metro and Evergy Missouri West*, (Dec. 4, 2020).
[60] Ex. 100: Bolin Rebuttal, p. 5.
[61] Transcript Vol. 3 at p. 288; *see also* Ex. 300: Meyer Rebuttal, p. 12.
[62] *Order Opening a Working Case to Consider Best Practices*, File No. AW-2020-0356 (May 13, 2020).
[63] Ex. 3: Caisley Surrebuttal, p. 5; *see also Responses to Questions for Utilities*, File No. AW-2020-0356, Response to Q.1 (July 15, 2020) (Evergy Responses).
[64] Ex. 3: Caisley Surrebuttal, p. 5.
[65] Ex. 3: Caisley Surrebuttal, p. 11; Transcript Vol. 2 at p. 86-87; *see also* Evergy Responses, File No. AW-

not seek authority to defer these charitable contributions under an AAO and has stated it will not seek to recover these amounts in rates.[66]

35. On May 22, 2020, in File No. EO-2020-0383, Evergy filed a verified application before the Commission regarding its customer programs related to COVID-19.[67] Citing "severe economic consequences" resulting from rising unemployment, Evergy advised the Commission that it had suspended disconnections for non-payment for all but its largest business customers, suspended the accumulation of interest and late-payment fees and offered flexible 12-month payment arrangements.[68]

36. On May 28, 2020, the Commission issued an order in File No. EO-2020-0383 permitting implementation of Evergy's proposal to extend its disconnection and late-fee moratorium until July 15, 2020; offer extended payment plans for commercial and industrial customers; provide bill credit incentives in arrearage payment plans from June through August 2020; and continue offering a 12-month payment plan.[69]

37. Evergy observed that the number of customers owing past-due balances and the amount of arrearage owed grew steadily during the moratorium period.[70]

38. As Evergy planned to end the disconnection moratorium, it enacted a plan for direct contact with customers most at risk of disconnection.[71] The company attempted

2020-0356, Response Ex. 2.

[66] Ex. 9: Ives Surrebuttal, p. 30; Transcript Vol. 2 at p. 39; *see also Initial Post Hearing Brief of Evergy Missouri Metro and Evergy Missouri West*, p. 26 (Dec. 4, 2020).

[67] *Evergy Missouri Metro's and Evergy Missouri West's Application for Approval of COVID-19 Customer Programs and Motion for Expedited Treatment*, File No. EO-2020-0383, p. 4 (May 22, 2020) (Evergy Program Application).

[68] Evergy Program Application, p. 6-9. Evergy's application also included a charitable program to provide relief to some residential customers. *See* Evergy Program Application, p. 7-8 (confidential version).

[69] *Order Permitting COVID-19 Customer Programs*, File No. EO-2020-0383 (May 28, 2020).

[70] Ex. 3: Caisley Surrebuttal, p. 5; Ex. 9: Ives Surrebuttal, p. 15.

[71] Ex. 3: Caisley Surrebuttal, p. 10 (citing Evergy Responses, File No. AW-2020-0356, Response to Q.7, Response Ex. 3).

20,000 calls in a 13-day period.[72] In addition, the company used email, mail and online and social media platforms in a new campaign to communicate with customers.[73]

39. Evergy expedited the hiring and training of customer service representatives and increased call center remote capability from 20% to up to 99% remote capability.[74]

40. The one-month plan encouraged customers to pay the balance due in that period by providing a bill of credit up to $100.[75] The four-month plan provided a $25 credit, with an additional credit of up to $75 after final pay off.[76] The incentive plans were available to customers in June, July and August 2020.[77]

41. Evergy began offering a 12-month payment plan without bill credit incentives to residential and small business customers in March 2020,[78] and Evergy has committed to offering that option through December 31, 2020.[79]

42. Evergy also committed to waive late-payment fees and security deposit fees through December 31, 2020, and suspended non-payment, late payment and debt reporting to credit bureaus.[80]

43. As of September 4, 2020, Evergy reported 68,000 customers were enrolled in pay arrangements, including 9,000 customers that received incentive bill credits.[81]

44. In addition to costs associated with a non-payment moratorium and customer communication, Evergy has incurred new and increased operations and

[72] Ex. 3: Caisley Surrebuttal, p. 10; *see also* Evergy Responses, File No. AW-2020-0356, Response to Q.7, Response Ex. 3.
[73] Ex. 3: Caisley Surrebuttal, p. 10.
[74] Transcript Vol. 2 at p. 101.
[75] Ex. 3: Caisley Surrebuttal, p. 8.
[76] Ex. 3: Caisley Surrebuttal, p. 5.
[77] Ex. 3: Caisley Surrebuttal, p. 8.
[78] Evergy Responses, File No. AW-2020-0356, Response to Q. 5.
[79] Ex. 3: Caisley Surrebuttal, p. 8-9.
[80] Ex. 3, Caisley Surrebuttal, p. 7.
[81] Ex. 3: Caisley Surrebuttal, p. 10-11.

maintenance expenses to protect employees and customers during the pandemic.[82] These items include costs for additional cleaning of facilities and vehicles, personal protective equipment such as masks, gloves, sanitizing sprays, temperature testing, and plastic shields.[83]

45. Evergy has also incurred costs to enable employees to work from home[84] and to prepare to sequester employees, should sequestration of essential employees become necessary.[85]

46. The pandemic has resulted in cost savings for Evergy's operations.[86] Areas of savings include reduced travel costs, reduced office supply expenses and reduced utility expenses for Evergy offices.[87]

47. Evergy estimated that after savings are included as an offset, costs incurred by Evergy in relation to the COVID-19 pandemic total about $1.4 million to $1.5 million for Evergy Missouri West and $2 million for Evergy Missouri Metro through the end of September 2020.[88]

48. The emergency of the COVID-19 pandemic and its prolonged and pervasive effects constitute an "extraordinary" event, akin to a damaging storm or other devastating disaster.[89]

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[82] Ex. 4: Klote Direct, p. 6; Ex. 300: Meyer Rebuttal, p. 17.
[83] Ex. 4: Klote Direct, p. 5, 7; Ex. 7: Ives Surrebuttal, p. 4-5, Table 1; Ex. 300: Meyer Rebuttal, p. 17.
[84] Ex. 4: Klote Direct, p. 6-7; Ex. 300: Meyer Rebuttal, p. 16-17.
[85] Ex. 4: Klote Direct, p. 7; Ex. 300: Meyer Rebuttal, p. 17.
[86] Ex. 4: Klote Direct, p. 9; Ex. 7: Ives Direct, p. 14; Ex. 200: Schallenberg Rebuttal, Attachment: RES-R-5, Evergy response to data request re: savings; Evergy Application, ¶ 18.
[87] Ex. 4: Klote Direct, p. 9; Ex. 7: Ives Direct, p. 14; Ex. 200: Schallenberg Rebuttal, Attachment: RES-R-5, Evergy response to data request re: savings.
[88] Transcript Vol. 2 at p. 175-76.
[89] Ex. 100: Bolin Rebuttal, p. 6 ("The COVID-19 pandemic has affected life in the U.S. to a degree not previously seen from a disease outbreak in living memory"); Ex. 200: Schallenberg Rebuttal, p. 10 ("COVID-19 is an extraordinary event that has global effects"); Ex. 201: Murray Rebuttal, p. 3 ("While the COVID-19 pandemic may be an extraordinary event, a recession is not"); Ex. 202: Marke Rebuttal, p. 2 (Existing rates compensate Evergy for "extraordinary events"); Ex. 300: Meyer Rebuttal, p. 5 ("Much like a tornado, ice storm or other Act of God, the pandemic is an event that is abnormal or significantly different from that normally faced by Evergy. ... [T]his is an extraordinary situation"); Ex. 500: Roberto Rebuttal, p. 15 ("The COVID-19

49. The full consequences of the pandemic for Evergy are not yet known and cannot be predicted at this time.[90]

Conclusions of Law

A. The Commission may take official notice to the same extent as the courts take judicial notice.[91] Judicial notice permits the court and jury to rely upon known facts without additional proof because such facts constitute either "judicial knowledge" or "common knowledge."[92]

B. Missouri courts may take judicial notice of the acts of government officials, and may do so even when such acts are not referenced by the parties in a case.[93] In the context of the COVID-19 pandemic, courts have taken judicial notice of the emergence of the pandemic, established facts about disease risk and impacts and the government response.[94]

C. Section 386.020(15) defines "electrical corporation" as including:

> every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, … owning, operating,

pandemic can be judged an extraordinary event"); Ex. 1000, Colton Rebuttal, p. 8 ("[T]he COVID-19 pandemic is obviously a critical public health crisis to the general population").

[90] Ex. 3: Caisley Surrebuttal, p. 4 ("Evergy faces an unknown, and as yet indeterminable risk"); Ex. 4: Klote Direct, p. 4 ("It is unknown at this time how long the extraordinary impacts associated with COVID-19 will continue"); Ex. 9: Ives Surrebuttal, p. 15 ("[T]he effects that Evergy is experiencing will continue for some unknown period of time"); Ex. 100: Bolin Rebuttal, p. 6 (Ultimate financial impacts are "unknown" as the pandemic persists for an "indefinite period"); Ex. 200: Schallenberg Rebuttal, p. 11, 12 ("[T]he [c]ompanies don't know the financial impacts of COVID-19 on their operations and will not know for the foreseeable future," "[I]t [is] impossible to quantify the potential adverse financial impacts at this time"); Ex. 203: Marke Surrebuttal, Attachment: GM-S-1, Memorandum, File No. AW-2020-0356 (Aug. 31, 2020) ("[W]e are operating in a world of pronounced uncertainty"); Ex. 300: Meyer Rebuttal, p. 5 ("[T]he pandemic is ongoing and the duration is highly uncertain").

[91] Section 536.070(6).

[92] *State v. Mullenix*, 73 S.W.3d 32, 37 (Mo. App. W.D. 2002).

[93] *Shannon Cty. ex rel. Winona Consol. Sch. Dist. v. Shannon Cty. Bank*, 86 S.W.2d 1070, 1072-73 (Mo. App. 1935)(referencing proclamations by the president and governor concerning bank closures).

[94] *Sinner v. Jaeger*, 467 F.Supp.3d 774, 779 n.2 (D. N.D. 2020); *see also Ware v. St. Louis City Justice Center*, No. 4:20-CV-01065-AGF, 2020 WL 7240455, at *1 n.1 (E.D. Mo. Dec. 9, 2020) (defining COVID-19 pandemic by reference to presidential proclamation). *See also* Fed. R. Evid. 201. The federal rule, while not operative in state courts, has been consulted to construe the nature of judicial notice. *See State v. Todd*, 183 S.W.3d 273, 277 (Mo. App. W.D. 2005), *State v. Spain*, 759 S.W.2d 871, 874 n.1 (Mo. App. E.D. 1988).

> controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others[.]

D. Section 386.020(43) defines "public utility" as including:

> every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heating company or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]

E. Evergy Missouri Metro and Evergy Missouri West are "electrical corporations" and "public utilities" subject to regulation by the Commission pursuant to its authority under Chapters 386 and 393 of the Revised Statutes of Missouri.[95]

F. The Commission's authority under Section 393.140 includes the express power to "prescribe uniform methods of keeping accounts, records and books" to be observed by electrical corporations.[96] In addition, the Commission may order "forms of accounts, records and memoranda to be kept by such persons and corporations."[97] The Commission may prescribe and order accounting methods and forms "in its discretion."[98]

G. Commission supervision of utility accounting includes the power, "after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited" by electrical corporations.[99]

H. An AAO is a Commission order that authorizes a utility to account for

[95] Evergy Application, p. 1-2; *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 858 S.W.2d 806, 807 (Mo. App. W.D. 1993)(Section 393.140 establishes Commission's general powers); *see also* Section 386.250.
[96] Section 393.140(4).
[97] Section 393.140(4).
[98] Section 393.140(4).
[99] Section 393.140(8).

extraordinary items.[100] AAOs may be used to govern expense and savings items.[101] An AAO creates a "balance-sheet account" to defer items to be considered in a utility's next general rate case, even though such items may occur outside the "test" period used to set rates.[102]

I. An AAO is not ratemaking and creates no expectation of recovery.[103] The Commission is not bound by the terms of an AAO in setting rates.[104]

J. The Commission is vested with "substantial discretion in determining whether an AAO is appropriate in a particular case."[105]

K. Under the test applied by the Commission, an AAO may be appropriate when "events occur during a period which are extraordinary, unusual and unique, and not recurring."[106] This has been described as "the Sibley standard."[107]

L. Consistent with the Commission's authority to prescribe accounting standards, Commission Rule 20 CSR 4240-20.030(1) requires electrical corporations to keep accounts in conformity with the Uniform System of Accounts (USoA) Prescribed for Public Utilities and Licensees, as prescribed by the Federal Energy Regulatory Commission and published at 18 CFR Part 101 (1992).[108]

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[100] *Office of Pub. Counsel v. Evergy Mo. W., Inc.,* 609 S.W.3d 857, 860 (Mo. App. W.D. 2020)(citing *State ex rel. Aquila, Inc. v. Pub. Serv. Comm'n*, 326 S.W.3d 20, 27 (Mo. App. W.D. 2010)).
[101] *Office of Pub. Counsel*, 609 S.W.3d at 868 (holding AAOs may be granted for savings items); *State ex rel. Aquila, Inc.*, 326 S.W.3d at 27 (describing use of AAO for expense items).
[102] *Office of Pub. Counsel v. Evergy Mo. W., Inc.,* 609 S.W.3d at 860 (citing *Aquila, Inc.*, 326 S.W.3d at 27)).
[103] *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 336 (Mo. App. W.D. 2006)(items deferred under an AAO are not automatically entitled to recovery in the next rate case because of the Commission's obligation to consider all relevant factors)(citing *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 434, 438 (Mo. App. W.D. 1998)).
[104] *Mo. Gas Energy,* 978 S.W.2d at 438.
[105] *Office of Pub. Counsel*, 609 S.W.3d at 866 (quoting *In re Kan. City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Pub. Serv. Comm'n*, 509 S.W.3d 757, 770 (Mo. App. W.D. 2016) ("KCP&L")).
[106] *In re Mo. Pub. Serv.*, *Report and Order*, File No. EO-91-358, p. 7 (Dec. 20, 1991)("1991 Sibley Order"), *aff'd State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 858 S.W.2d 806 (Mo. App. W.D. 1993).
[107] *Office of Pub. Counsel*, 609 S.W.3d at 868.
[108] *See also State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 858 S.W.2d at 808.

M. The Commission developed the "extraordinary, unusual, unique and not recurring" standard in reference to General Instruction 7 of the USoA.[109]

N. The USoA provides that a utility's income should generally reflect all items of profit and loss during the period.[110] Certain items, however, may be eligible for special treatment. In the words of the instruction:

> Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future. … To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary.[111]

O. Although the Commission has consulted General Instruction 7 in its decisions regarding AAOs, a determination that "extraordinary" expenses are eligible for deferral accounting is a "policy decision" and "is not dictated by whether, in the abstract, the USoA provides a mechanism to defer costs."[112]

P. In the 30 years since the Commission described what is now recognized as the "Sibley standard,"[113] the Commission has at times found it useful to evaluate the scope of items potentially subject to deferral relative to company income. This issue has been described as an evaluation of "materiality."[114]

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[109] 1991 Sibley Order, p. 7-8.
[110] "It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below." 18 CFR Ch. 1, Pt. 101, General Instruction 7 (1992).
[111] 18 CFR Ch. 1, Pt. 101, General Instruction 7.
[112] *KCP&L*, 509 S.W.3d at 769-70.
[113] *Office of Pub. Counsel*, 609 S.W.3d at 868.
[114] *See, e.g., Office of Pub. Counsel v. KCP&L Greater Mo. Operations Co.*, *Report and Order*, File No. EC-2019-0200, p. 6, (Oct. 17, 2019) ("financial impact" of plant retirement, in excess of 5% of net income, among fact findings in support of order for AAO requiring use of regulatory liability for revenue derived from retired plant), *aff'd Office of Pub. Counsel*, 609 S.W.3d 857 (Mo. App. W.D. 2020); *In re Application of Spire Missouri Inc. for AAO Concerning Comm'n Assessment*, File No. GU-2019-0011, p. 11, 14-17 (March 20, 2019)(citing

Q. "Materiality" was considered by the Commission in the order cited as the source of the "Sibley standard." In that case, the Commission observed that "whether the event has a material or substantial effect on a utility's earnings is also important, but not a primary concern."[115]

R. Other Commission decisions have evaluated and granted AAOs without requiring demonstration of a specific degree of financial impact for the company.[116]

S. While the Commission may consult its prior decisions, the Commission is not bound by *stare decisis*.[117] A Commission decision may differ from previous orders so long as the decision is otherwise lawful and reasonable.[118]

Decision

Evergy seeks an order authorizing the use of a regulatory asset to accumulate and defer all extraordinary costs and financial impacts incurred as a result of the COVID-19 pandemic. An AAO will allow Evergy to seek recovery of such costs, offset by any savings,

5% standard as "yardstick" for materiality of cost proposed for deferral treatment; finding assessment amounting to 1% did not qualify for an AAO because the increased assessment was not unusual, infrequent or extraordinary); *In re Application of Missouri-American Water Co. for AAO*, *Report and Order,* File No. WU-2017-0296, p. 7, 9 (Nov. 30, 2017)(finding Commission has considered "materiality" of costs, under a 5% standard, to determine whether costs are extraordinary); *In re Joint Application of Missouri-American Water Co., St. Louis Water Co., and Jefferson City Water Works Co. for AAO*, *Report and Order on Remand*, File No. WO-2002-273, p. 34 (Nov. 10, 2004)(observing Commission must consider the "magnitude of the item proposed for deferral" and that such "materiality" is one factor considered). Orders approving unanimous agreements are not addressed.

[115] 1991 Sibley Order, p. 8.

[116] *In re Application of S. Union Co. for Issuance of AAO Relating to its Nat. Gas Operations*, *Report and Order*, File No. GU-2011-0392, p. 14-15 (Jan. 25, 2012)(finding specific expenditure threshold need not be met to establish "significant effect" justifying AAO after tornado, noting restoration costs continued at the time of decision); *In re the Application of Mo. Gas Energy for Issuance of an AAO Relating to Year 2000 Compliance*, *Report and Order*, File No. GO-99-258, p. 4-6 (March 2, 2000)(finding expenses associated with "Y2K" compliance need not be determined to be "material" to allow deferral when "both the event causing the expenditures and the expenditures themselves are extraordinary."). Orders approving unanimous agreements are not addressed.

[117] *State ex rel. GTE N., Inc. v. Pub. Serv. Comm'n*, 835 S.W.2d 356, 371 (Mo. App. W.D. 1992) (citing *State ex rel. Churchill Truck Lines, Inc. v. Pub. Serv. Comm'n*, 734 S.W.2d 586, 593 (Mo. App. 1987)).

[118] *State ex rel. Aquila Inc.*, 326 S.W.3d at 32.

in a future rate case proceeding. Evergy's rates are frozen through December 6, 2021, and Evergy intends to file general rate cases in January 2022.

The first issue posed by Evergy's application is whether costs and financial impacts resulting from the COVID-19 pandemic are eligible for treatment under an AAO. Deferral accounting is an exception to ordinary accounting standards, which generally require that costs be accounted for when incurred. Some situations, however, justify a deviation from ordinary accounting rules, in particular when the Commission determines certain costs and/or savings should be deferred for consideration in a future proceeding. The Commission's established standard provides that an AAO may be appropriate when events occur that are extraordinary, unusual and unique, and not recurring.

The Commission finds the COVID-19 pandemic is such an extraordinary, unusual and unique and not recurring event, which has had a demonstrated impact on Evergy's operations. Therefore, the Commission finds costs and savings directly associated with the pandemic are eligible for deferral under an AAO so that they can be considered in a future rate case.

COVID-19 is "extraordinary" in many ways. Attempts to deter spread of the virus from person-to-person have resulted in pervasive disruption of daily life throughout the country and the state, and Evergy's service area is no exception. Few institutions or businesses were prepared to cope with the sudden need to separate people and adapt to remote work arrangements. The disruption has resulted in reduced income and lost jobs, and the economic impacts of the pandemic have been profound for many.

Evidence on the record in this case demonstrates that Evergy responded to the initial stay-at-home orders by temporarily ending disconnections and offering new programs to help customers pay past-due bills and maintain service. Like most other employers at this

time, Evergy also incurred costs to cope directly with the threat of the virus, enabling employees to work remotely and preparing essential workers to work amid a pandemic. At the same time, remote work and limited travel have resulted in savings for the company. As of the end of September 2020, the collective impact of the COVID-19 pandemic for the companies was estimated to be in the range of about $3.5 million after savings.[119]

In addition to actual financial consequences, uncontested facts on the record demonstrate that the COVID-19 pandemic has required Evergy to act in unprecedented ways to protect its employees and customers and cope with increasing arrearages in an uncertain environment. The circumstances are unusual and have demanded that the company act quickly to adapt its workforce, train employees and initiate new programs for customers.

OPC proposes the Commission should not allow an AAO at this time on the theory that Evergy has failed to show a significant or "material" financial impact from the pandemic. It argues that the Commission should deny Evergy's application because financial impacts appear to be less than 5% of net income. This "materiality" standard, OPC contends, is required by the USoA and the Commission's application of the USoA in previous cases.

The Commission is not able to adopt OPC's view because it does not comport with the Commission's wide discretion to determine when an AAO is appropriate under a given set of facts. As provided by Section 393.140, RSMo, the Commission has authority, in its discretion, to prescribe the methods used by electrical corporations to keep accounts, records and books.[120] The Commission is not bound by *stare decisis*[121] and determines each AAO application on its distinct facts. Even if the Commission were bound by its prior

[119] This observation is made for the limited purpose of determining whether an AAO is appropriate at this time and should not be applied or relied upon for any other purpose.
[120] *See also* Section 386.250.
[121] *State ex rel. GTE N.*, 835 S.W.2d at 371.

decisions, the Commission's AAO decisions do not align with the rigid standard OPC proposes. In fact, the Commission has repeatedly rejected imposition of narrow standards and maintained its practice of case-by-case review. In determining whether an AAO is warranted to address "extraordinary" circumstances, the Commission has consistently regarded financial impact as relevant but not dispositive.

Even if the Commission's previous decisions indicated strict adherence to a showing of financial impact, requiring such a showing in this case is impractical. The pandemic has caused profound uncertainty. Like a destructive storm, COVID-19 arrived suddenly. But unlike a storm, it has not passed. Ten months after the onset of the pandemic, the scope of damage remains unclear and it is not known when conditions might return to "normal" or how long it will take for communities to recover. The full financial impact of the pandemic is not yet known and cannot be known at this time. Materiality can be determined in a future rate case. The limited exceptions to ordinary accounting practices provided by this order are reasonable given the uncertainty caused by COVID-19, and the Commission will grant in part Evergy's application for an accounting authority order.

B. What items should be included in an accounting authority order?

Findings of Fact[122]

50. Evergy's application sought deferral accounting for its "actual reasonable and prudently incurred costs related to the COVID-19 pandemic," including (1) "new or incremental operating and maintenance expense related to protecting employees and customers and plan[ning] for and communicat[ing] about impacts of the pandemic"; (2) "costs related to preparing for and any actual sequestration of employees"; (3) "costs

[122] Issues are divided for purposes of organization and clarity. Findings of fact are cumulative; each set of findings incorporates findings stated for previous issues.

related to new assistance programs implemented to aid customers with payment of electric bills during the pandemic"; and (4) "increased bad debt expense to the extent [bad debt] exceed[s] levels included in the cost of service."[123]

51. In addition, Evergy's application sought deferral accounting for carrying costs and "lost revenues related to the COVID-19 pandemic."[124]

52. Evergy's application proposed that cost items should be identified, tracked, accumulated and deferred in a regulatory asset, to be offset by "costs avoided related to COVID-19."[125] Savings items, or "offsets," identified in Evergy's application include: reduced travel costs, reduced utility and "other costs" at Evergy offices, as well as "any related increase in residential revenues that occurs as a result of more people working from home."[126]

53. Since the onset of the pandemic, Evergy has incurred costs to protect employees at work.[127] These costs include cleaning supplies, personal protective equipment, temperature testing and preparations for the potential need to sequester employees during a quarantine to continue to provide service.[128]

54. In response to stay-at-home orders, Evergy has incurred costs to enable employees to work from home, including hardware, software and internet-access costs.[129]

55. Evergy's director of regulatory affairs testified that through September 2020, costs for the incentive payment plans offered in June, July and August 2020 totaled $38,199 for Evergy Missouri Metro and $31,028 for Evergy Missouri West, not including costs for

[123] Evergy Application, ¶ 36 (renumbered for clarity).
[124] Evergy Application, ¶ 36.
[125] Evergy Application, ¶ 36.
[126] Evergy Application, ¶¶ 36, 38.
[127] Ex. 4: Klote Direct, p. 7.
[128] Ex. 4: Klote Direct, p. 7; *see also* Ex. 300: Meyer Rebuttal, p. 17.
[129] Ex. 4: Klote Direct, p. 6-7.

customer communications and outreach associated with the plans.[130]

56. With the introduction of a disconnection moratorium coinciding with stay-at-home orders in March 2020, Evergy observed increasing numbers of customers with past-due balances and a corresponding increase in the amount of arrears owed.[131] The moratorium included waiver of all charges, fees and deposits typically associated with non-payment or late payment of electricity bills.[132]

57. Uncollectible expense, or "bad debt," is among the types of costs that are considered when rates are established.[133] In addition, rates include late fees, charges and deposits as revenue associated with late payments.[134] The cost of service determined in Evergy's most recent rate cases includes consideration of these categories of costs and revenues.[135]

58. Evergy, Staff, MIEC, MECG and Sierra Club filed a *Non-Unanimous Stipulation and Agreement* (Agreement) to resolve Evergy's application for an AAO.[136] The Agreement specifies proposed cost items that the signatories ask the Commission to approve for deferral under an AAO, as well as savings items the signatories ask the Commission to require as an offset to any such deferred costs.[137]

59. At hearing in this case on November 12-13, 2020, Evergy, along with the other signatories to the Agreement, asked the Commission to issue an AAO consistent with the terms of the Agreement.[138] The Agreement proposes that Evergy be authorized to defer

[130] Transcript Vol. 2 at p. 150-51.
[131] Ex. 3: Caisley Surrebuttal, p. 5; Ex. 6C: Ives Direct, p. 9.
[132] Ex. 3: Caisley Surrebuttal, p. 4.
[133] Ex. 300: Meyer Rebuttal, p. 12-13;
[134] Ex. 300: Meyer Rebuttal, p. 13.
[135] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶4; *see also* Transcript Vol. 2 at p. 41,; Transcript Vol. 3 at p. 309.
[136] Ex. 1: *Non-Unanimous Stipulation and Agreement*.
[137] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶¶2, 7.
[138] Transcript Vol. 2 at p. 142-43; Evergy Initial Brief, p. 32 (Dec. 4, 2020).

only new or incremental costs specifically identified by the Agreement, to be offset by specified savings, or "cost reductions," caused by the COVID-19 pandemic.[139]

60. Consistent with the terms of the Agreement, the signatories request the Commission issue an order that authorizes Evergy "to track and defer into a regulatory asset the following incremental costs caused by the COVID-19 pandemic:"

> (a) new or incremental operating and maintenance expense related to protecting employees and customers – eligible costs are the following:
>
> (i) additional cleaning of facilities and vehicles;
>
> (ii) personal protective equipment (i.e., masks, gloves, sanitizing sprays, temperature testing, plexiglass shields, etc.);
>
> (iii) technology upgrades which include equipment directly related to enabling employees to work from home and associated contract labor. Such costs shall not extend to costs normally incurred by the employee including internet connectivity at the home; and
>
> (iv) employee sequestration preparation costs (and employee sequestration costs if that becomes necessary).
>
> (b) increased bad debt expense due to COVID-19 to the extent total bad debt expense exceeds levels included in the cost of service;
>
> (c) Costs related to any assistance programs implemented to aid customers with payment of electric bills during the pandemic except for the contributions by the Company addressed in paragraph 17 and the program designated as confidential in the Company's filing in Case No. EO-2020-0383; and
>
> (d) Waived fee revenues up to the amount included in rates related to waived late payment fees and waived reconnection fees.[140]

61. Consistent with the terms of the Agreement, the signatories propose the Commission should provide for specific items to offset deferred costs under the AAO, as follows:

> The Signatories agree that operating cost reductions caused by the

[139] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶¶ 2, 7, 13.
[140] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶2.

> COVID-19 pandemic shall be tracked and netted against the deferred costs recorded as a regulatory asset. These cost reductions will be identified and tracked separately and included in the reporting process prescribed in paragraph 9 below. These deferred COVID-19 operating cost reductions will be tracked so long as the total expense in each cost category is below the level included in rates in the Company's last rate cases. Operating cost reductions related to the COVID-19 pandemic will be reported separately for Evergy Missouri Metro and Evergy Missouri West. COVID-19 operating cost reductions to be tracked and netted against deferred costs include:
>
> (a) Travel expense (hotels, airfare, meals, entertainment);
>
> (b) Training expense;
>
> (c) Office supplies;
>
> (d) Utility service provided to facilities leased or owned by the Company;
>
> (e) Staffing reductions due to the COVID-19 pandemic and excluding staffing reductions instituted in furtherance of merger savings and integration plans or in furtherance of the Sustainability Transformation Plan;
>
> (f) Reduced employee compensation and benefits due to the COVID-19 pandemic and excluding reductions in furtherance of merger savings and integration plans or in furtherance of the Sustainability Plan;
>
> (g) Any income tax benefits from taxable net operating losses that are carried back to previous tax years per the 2020 Coronavirus Aid, Relief and Economic Security ("CARES") Act; and
>
> (h) Any direct federal or state assistance the Company receives, or any federal or state assistance received by Evergy, Inc., properly allocable to Evergy Missouri Metro and/or Evergy Missouri West, related to COVID-19 relief.[141]

62. The Agreement proposes that the Commission should limit deferral for certain items based on the amounts established in the most recent rate case proceedings and establishes the specific uncollectibles or "bad debt" expense, late payment fees and service reconnection charges included in the most recent rate cases.[142] Those figures are as follows: $5,552,581 (Evergy Missouri Metro) and $2,894,841 (Evergy Missouri West) for

[141] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶7.
[142] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶¶ 2, 4.

bad debt; $1,909,451 (Evergy Missouri Metro) and $725,422 (Evergy Missouri West) for late payment fees, and $362,605 (Evergy Missouri Metro) and $271,385 (Evergy Missouri West) for service reconnection charges.[143] A witness for MECG/MIEC verified the accuracy of the figures stated in paragraph 4 of the Agreement.[144]

63. The Agreement proposes that Evergy be required to track all costs separately for Evergy Missouri Metro and Evergy Missouri West[145] and report all cost reductions separately for each company.[146]

64. Evergy's director of regulatory affairs testified that allocation principles should be followed in the accumulation of deferred costs, and that the company would follow allocation principles established in company cost allocation manuals.[147]

65. Evergy may realize savings from the pandemic through its parent company or directly at the operating company level.[148]

66. OPC's chief economist suggests the Commission require Evergy to offset deferred costs with additional savings items, including: "[u]se of short-term debt" at lower interest rates; "[d]eferral of capital projects that will not affect reliability and safety" and "[r]educed allocation of costs from shared services or parent organizations due to cost reductions experienced at those entities."[149]

67. OPC's chief economist also suggests savings in "income and revenue taxes," as well as "reduced salaries and wages," "reduced incentive pay or employee bonuses," and any reduced "chief executive officer" and "named executive officer" compensation.[150]

[143] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶4.
[144] Ex. 300: Meyer Rebuttal, p. 14, 17.
[145] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶3.
[146] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶7.
[147] Ex. 5: Klote Surrebuttal, p. 18.
[148] Ex. 300: Meyer Rebuttal, p. 19-20.
[149] Ex. 202: Marke Rebuttal, p. 11.
[150] Ex. 202: Marke Rebuttal, p. 19.

68. The Agreement does not allow for deferral of lost revenues,[151] and Evergy has withdrawn the issue and agrees it is no longer requesting deferral of lost revenues or lost fixed costs.[152]

69. Consistent with the Agreement,[153] Evergy has withdrawn its request regarding carrying costs and agrees treatment of carrying costs should be determined in the companies' next general rate case proceedings.[154]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission will grant an AAO to allow Evergy to defer, in a regulatory asset, specified costs associated with the COVID-19 pandemic netted against specified savings, also associated with the pandemic. The Commission finds the categories of costs proposed for deferral are closely related to the pandemic as they are expenses incurred to protect employees and offer some assistance to customers during the pandemic.

Because the purpose of the AAO is to capture and reflect the financial impact of the COVID-19 pandemic for consideration in a future rate case, the Commission finds it is appropriate to adopt the Agreement's provisions to determine excess uncollectibles or "bad debt" expense and depressed late payment fee and service reconnection charge revenue items by reference to amounts established in the most recent rate cases. The Commission finds the Agreement's proposed limitation of deferral of uncollectibles expense, late payment fees and service reconnection charges is appropriate, because rates incorporate anticipated amounts of "bad debt," as well as anticipated income from late payment fees

[151] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶6.
[152] Transcript Vol. 2 at p. 144.
[153] Transcript Vol. 2 at p. 42; Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶5.
[154] Transcript Vol. 2 at p. 156, 186-87; Evergy Initial Brief, p. 15 (Dec. 4, 2020).

and service reconnection charges. Based on testimony that the amounts stated in the Agreement derive from the most recent rate proceeding and have been verified, the Commission will approve the figures stated in paragraph 4 of the Agreement to be applied in compliance with this order.

The Commission's order will adopt the cost and savings items specified by the Agreement. The Commission finds the record demonstrates Evergy has incurred, or may be reasonably expected to incur, each of the costs identified by the Agreement. Likewise, the Commission finds the savings items identified by the Agreement reasonably reflect the types of savings likely to be derived from the circumstances of the pandemic and finds Evergy's agreement to those items provides additional support for application of those savings items as offsets under an AAO.

The Commission finds there is inadequate information on the record to evaluate OPC's recommendations regarding taxes, the cost of debt and capital projects because those proposals were made in summary fashion. Savings arising from reduced labor costs in the pandemic appear to be addressed by the Agreement. However, Evergy's potential savings from reduced allocation of costs from shared services or parent organizations should be addressed, as OPC recommends. Based on the corporate structure in which Evergy Missouri West and Evergy Missouri Metro operate, the Commission finds such additional potential savings should be accounted for as an offset to any costs deferred under an AAO.

The Commission finds savings should be netted against a regulatory asset as Evergy requests, rather than accumulated as a regulatory liability. MECG and MIEC are the only parties that proposed the use of a regulatory liability, on the basis that such an

arrangement would be preferable for purposes of audit and a future rate case.[155] However, both parties are signatories to the Agreement and now ask the Commission to issue an order consistent with its terms.[156]

The accounting and reporting requirements under the Agreement, discussed in Issue D, will allow Evergy and the Commission to track savings items against costs without the use of a regulatory liability. Therefore, the Commission will approve the offset of savings items against a regulatory asset, as proposed by the Agreement.

In a related issue, the Commission will approve the requirement that costs and savings be tracked separately for Evergy Missouri West and Evergy Missouri Metro. As advocated by MECG and MIEC,[157] and because both companies are subsidiaries of Evergy, Inc., and Evergy Missouri Metro operates in two states, the Commission will order that costs and savings be allocated correctly, taking into consideration additional Evergy, Inc. subsidiaries and in accord with the allocation in Evergy Missouri Metro's most recent rate proceeding.[158]

Evergy has withdrawn its requests to defer lost revenue or lost fixed costs. Likewise, Evergy no longer requests that an AAO address carrying costs. Therefore, those items will be excluded from an AAO.

C. What should be the duration of an accounting authority order?

Findings of Fact

70. It is not known how long the COVID-19 pandemic or the consequences of the pandemic will continue.[159]

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[155] Ex. 300: Meyer Rebuttal, p. 19.
[156] Transcript Vol. 2 at p. 247; *Initial Brief of Midwest Energy Consumers Group*, p. 3 (Dec. 4, 2020); *Missouri Industrial Energy Consumers' Initial Brief*, p. 3-4 (Dec. 4, 2020).
[157] Ex. 300: Meyer Rebuttal, p. 22-23.
[158] File No. ER-2018-0145.
[159] Ex. 7: Ives Direct, p. 14; Ex. 3: Caisley Surrebuttal, p. 4; Ex. 4: Klote Direct, p. 4; Ex. 9: Ives Surrebuttal,

71. In the general rate proceeding it plans to file in January 2022, Evergy anticipates a "test year" consisting of the 12-month period of July 1, 2020, to June 30, 2021,[160] with a true-up period ending June 30, 2022.[161]

72. Evergy's application sought an AAO authorizing deferrals beginning on March 1, 2020.[162] Evergy proposed the Commission should not impose a "sunset" date for any COVID-19 AAO and instead authorize deferral at least until January 10, 2022, based on the company's intent to file a rate case in January 2022.[163]

73. The parties to the Agreement propose the Commission approve an AAO beginning on March 1, 2020,[164] and ending on March 31, 2021, with an extension under specified terms for uncollectibles expense.[165]

74. Under the Agreement, the period of deferral for uncollectible expense may be extended for up to two three-month periods, from April 1, 2021, through September 30, 2021, under specified circumstances.[166]

75. The extended deferral period proposed under the Agreement would apply only to uncollectible expense and would not include offset from savings items as proposed in the initial deferral period through March 31, 2021.[167]

76. The proposed extended deferral period would compare the uncollectibles expense determined in each company's last rate case with actual net write-offs incurred during the quarter, potentially resulting in either an additional amount deferred to the

p. 15; Ex. 100: Bolin Rebuttal, p. 6; Ex. 200: Schallenberg Rebuttal, p. 11, 12; Ex. 300: Meyer Rebuttal, p. 5.
[160] Ex. 7: Ives Direct, p. 14.
[161] Ex. 5: Klote Surrebuttal, p. 14.
[162] Evergy Application, ¶ 36.
[163] Ex. 5: Klote Surrebuttal, p. 4-7.
[164] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶ 2; *see also* Ex. 100: Bolin Rebuttal, p. 6.
[165] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶ 8.
[166] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶ 8; Transcript Vol. 2 at p. 43, 128-29, 171, 207-8, 246-47.
[167] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶8; Transcript Vol. 3 at p. 42-43, 128-30.

regulatory asset or an offset.[168]

77. Deferral would be allowed for net write-offs in excess of 10% of the uncollectible expense for that quarter as determined in the last rate case.[169] Conversely, an offset to the regulatory asset would be allowed to the extent that uncollectibles expense for the quarter as determined in the last rate case exceeded net write-offs for the quarter by 10%.[170]

78. Under the Agreement, the duration of the AAO, including the potentially extended period for uncollectibles expense, could be further extended by Commission order.[171]

79. On October 21, 2020, the Commission approved Spire Missouri Inc.'s application for an AAO to govern extraordinary costs and financial impacts related to the COVID-19 pandemic, pursuant to a unanimous amended agreement.[172] The order establishes a deferral period of March 1, 2020, through March 31, 2021.[173]

80. On October 28, 2020, the Commission approved Missouri-American Water Company's application for an AAO to govern all extraordinary costs and financial impacts incurred as a result of the COVID-19 pandemic.[174] No party in that case objected to the non-unanimous agreement.[175] The order establishes a deferral period of March 1, 2020, through March 31, 2021.[176]

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[168] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶8(a),(b),(c), and Exhibit 1 attached to Agreement; Transcript Vol. 2 at p. 207.
[169] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶8(b); Transcript Vol. 2 at p. 208, 246-47.
[170] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶8(c); Transcript Vol. 2 at p. 208, 246-47.
[171] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶8, ¶8(a).
[172] *Order Approving Amended Unanimous Stipulation and Agreement*, File No. GU-2020-0376 (Oct. 21, 2020). The Commission has taken official notice of File Nos. GU-2020-0375 and WU-2020-0417. Transcript Vol. 3 at p. 319.
[173] *Order Approving Amended Unanimous Stipulation and Agreement*, File No. GU-2020-0376, Appendix A: *Amended Unanimous Stipulation and Agreement*, ¶¶2, 8.
[174] *Order Approving Non-Unanimous Stipulation and Agreement*, File No. WU-2020-0417 (Oct. 28, 2020).
[175] *Order Approving Non-Unanimous Stipulation and Agreement*, File No. WU-2020-0417, p. 1-2.
[176] *Order Approving Non-Unanimous Stipulation and Agreement*, File No. WU-2020-0417, Appendix A:

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

Although Evergy initially requested that the Commission authorize deferral accounting through the filing of the companies' next rate case, the Agreement's proposed term establishes a deferral period of March 1, 2020, through March 31, 2021, with the possible exception of uncollectibles expense.

The record supports allowing deferral of costs beginning on March 1, 2020, which coincides with the date of the pandemic's onset as stated by the presidential proclamation that initiated state and local interventions to address COVID-19. Determining an appropriate end date for an AAO is more challenging. All parties acknowledge the duration of the pandemic cannot be predicted.

The Commission will not adopt the potential extension for uncollectibles expense. The extension isolates one possible consequence of the pandemic – increased "bad debt" – and treats that issue separately with reference only to bad debt write-offs in periods before the pandemic. However, the record demonstrates the pandemic has caused various financial impacts, some of which may result in savings for the company. Therefore, the Commission finds the proposed extension fails to properly account for the range of financial consequences of the pandemic for Evergy. The Commission's order will not include such an extension.

With the bad debt extension excluded, the Commission finds deferral through March 31, 2021, is reasonable under the circumstances. Such an order is largely consistent with the Agreement and aligns with the term established in the prior orders issued by the

Nonunanimous Stipulation and Agreement, ¶¶4, 8.

Commission to govern deferral accounting for COVID-19. Although the Commission's approval of those agreements is not controlling in this case, the Commission finds that it is reasonable to order the same treatment given to other utilities to address similar facts and circumstances arising from the pandemic.

The Commission will evaluate any application to extend the AAO based on the circumstances at that time.

D. Should an accounting authority order require Evergy to make reports to the Commission?

Findings of Fact

81. Evergy's application proposed an annual report setting forth its "costs incurred and revenues lost relating to COVID-19 during the preceding calendar year."[177] Evergy proposed such reports would continue no later than May 1 for each year until each company's next general rate case filing.[178]

82. The signatories to the Agreement propose Evergy file an initial report and updated quarterly reports to "identify all cost increases and decreases related to the pandemic" to date.[179]

83. In addition to specifying all cost increases and decreases related to the pandemic, the proposed initial and quarterly reports are required to include the following information:

(a) The number of customers, by customer class;

(b) The number of customers, by customer class, voluntarily disconnected by month;

(c) The number of customers, by customer class, involuntarily disconnected by month;

[177] Evergy Application, p. 13.
[178] Evergy Application, p. 13; Ex. 9: Ives Surrebuttal, p. 37.
[179] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶9.

(d) Number of utility reconnections, reported by month;

(e) Number of customers on a utility payment plan, by payment plan type (including budget billing), by month;

(f) Total dollar amount of arrearages by customer class;

(g) The number of accounts in arrearage by customer class in increments (e.g., less than $100, $101 to $250, $251 to $500, $501 to $750, $751 to $1000, $1001 to $1500, $1501 to $2000, $2000 to $2500, $2501 to $3000, and $3000+) by month;

(h) The range of arrearage amounts by customer class (i.e., current high and low dollar amount) and the mean average;

(i) A quantification of total past-due customer arrearages and number of customers experiencing arrearages, that are thirty, sixty, and ninety days overdue; and

(j) Total dollar amount of accounts receivable balances, including accounts receivable balances that are subject to payment plan agreements, by customer class.[180]

84. Under the Agreement, the initial quarterly report is required no later than two weeks after an AAO is issued and should identify cost categories to be tracked and deferred from March 1 through June 30, 2020.[181]

85. The Agreement proposes that quarterly reports, updating the initial report, be required within 45 days of the end of each quarter.[182] As proposed, the reports are required "until the conclusion of the update or true-up period, if applicable, in [Evergy's] next general rate case."[183]

86. Arrearage amounts proposed to be reported are defined to include only past-due bills.[184] Costs are to be "tracked by month" in the initial and quarterly reports.[185]

87. No party opposes the reporting requirements in the Agreement, although

[180] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶9.
[181] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶9.
[182] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶12.
[183] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶12.
[184] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶10.
[185] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶11.

OPC and NHT ask the Commission to impose additional reporting requirements.[186]

88. The Agreement proposes Evergy provide signatories to the Agreement copies of policies and procedures to govern how monthly deferral amounts are to be calculated for each category.[187] Such policies and procedures are required to include a proposed monthly reporting format.[188]

89. While recommending that the reporting required by the Agreement is consistent with transparency and accurate recording,[189] OPC proposes additional reporting categories.[190]

90. OPC recommends reporting of (1) "detailed identification of monthly weather normalized revenue by customer class"; (2) "detailed identification of revenue changes by customer class"; (3) the "impact COVID-19 has had on Evergy's capital expenditure program"; (4) any "issuances of short-term and long-term debt" and the "all-in costs at which financing was issued"; (5) "embedded cost of short-term debt; (6) "updated and most recent credit metrics"; (6) correspondence with and reports by credit rating agencies and equity analysts; (7) listed reductions and cost savings to date made to capital, operational and discretionary expenses to minimize cost impacts to ratepayers; and (8) a list of COVID-19 related expenses and their respective amount incurred to ensure safe and reliable service.[191]

91. NHT proposes Evergy be required to collect on a monthly basis various

[186] Ex. 1000: Colton Rebuttal, p. 114-16; *Statement of Positions of the National Housing Trust*, p. 5-6 (Sept. 16, 2020); *Initial Post-Hearing Brief of the Office of the Public Counsel*, p. 22 (Dec. 4, 2020).
[187] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶13.
[188] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶13.
[189] *Initial Post-Hearing Brief of the Office of the Public Counsel*, p. 22 (Dec. 4, 2020); *see also* Ex. 202: Marke Rebuttal, p. 19-20 (recommending reporting that includes all but one of the 10 lettered reporting provisions listed in the Agreement).
[190] Ex. 202: Marke Rebuttal, p. 11-12.
[191] Ex. 202: Marke Rebuttal, p. 11-12.

additional categories of information, which it proposes could be reported at whatever intervals the Commission prefers.[192] Reporting categories suggested by NHT that do not appear to be duplicated by the Agreement's reporting requirements include: (1) amount of billed revenue; (2) revenue collected; (3) number of accounts paid on time and in full; (4) number of accounts receiving notice of disconnection for non-payment; (5) average income of Economic Relief Pilot Program (ERPP) participants by poverty range (percent of federal poverty line); (6) number of new ERPP participants with unpaid balances; (7) value of unpaid balances at time of ERPP entry; (8) number of ERPP participants by poverty range; (9) average usage and average bill figures; (10) final bill number, specifying accounts with unpaid balances and no unpaid balance; and (11) detailed metrics regarding profile, arrearages, grant value and number of Evergy customers receiving hardship grants.[193]

Conclusions of Law [194]

T. In addition to the authority to establish uniform methods of keeping accounts, records and books of electrical corporations, Section 393.140(4), RSMo, authorizes the Commission to, "in its discretion, prescribe, by order, forms of accounts, records and memoranda" to be kept by electrical corporations. Such records are subject to examination by the Commission.[195]

[192] Ex. 1000: Colton Rebuttal, p. 114.
[193] Ex. 1000: Colton Rebuttal, p. 114-16; *Statement of Positions of the National Housing Trust*, p. 5-6 (Sept.16, 2020).
[194] Issues are divided for purposes of organization and clarity only. Conclusions of law are cumulative; each set of conclusions incorporates conclusions stated for previous issues, as necessary. Some issues may not require additional conclusions of law.
[195] Section 393.140(4).

Decision

In addition to its authority to prescribe uniform accounting methods, the Commission is authorized by Section 393.140(4) to order the forms of accounts, records and memoranda to be kept by electrical corporations, and is authorized by Section 393.140(8) to require electrical corporations to answer Commission inquiries and file specific reports.

The Commission finds that reporting associated with an AAO should be related to the matters addressed by the accounting order. None of the parties in this case object to the reporting proposed by the Agreement, although OPC and NHT propose additional items. Most of the additional items proposed by OPC and NHT pertain to Evergy's now withdrawn request to defer lost revenues or lost fixed costs. OPC has acknowledged that most of its recommendations for reporting are derived from a Kansas Corporation Commission order, which authorized Evergy to use deferral accounting to include "lost revenue."[196] However, the AAO issued here is limited to specified costs derived from the COVID-19 pandemic and does not include "lost revenue."

Nevertheless, OPC's recommendation that Evergy "list" COVID-19 expenditures and amounts appears to provide greater specificity than the "cost increases and decreases" proposed by the Agreement. Because the Commission determines it is reasonable to request Evergy provide specific cost information rather than a summary, the Commission will require that Evergy's initial report and quarterly updates also include a list of COVID-19 related expenses and their respective amount incurred to ensure safe and reliable service.

Finally, the Agreement proposes that Evergy disclose its policies and procedures for calculating monthly deferral amounts, as well as a proposed monthly reporting format. The

[196] Ex. 202: Marke Rebuttal, p. 11-12; Ex. 5: Klote Surrebuttal, p. 15-16.

Commission finds such disclosure is essential to the purposes of an AAO and will enable the Commission's oversight, as allowed by law. The Commission will approve the reporting provisions of the Agreement, which are not contested, and will add the requirement that Evergy list expenses and amounts in its reports. Rather than require submission to the various parties, the Commission will order that Evergy file in this case proposed policies and procedures for calculating monthly deferral amounts, as well as a proposed monthly reporting format.

E. Should the Commission require customer assistance as a condition of deferral accounting in this case?

Findings of Fact

92. The proposed Agreement includes provisions reciting customer assistance measures taken by Evergy to address the pandemic, including incentive payment programs no longer offered to customers.[197] In addition, the Agreement recounts charitable pledges made by Evergy in May 2020.[198]

93. In addition to reciting events and acts that have already taken place, the proposed Agreement includes agreements by Evergy to (1) consider and consult with Staff, OPC and NHT regarding further customer relief programs after December 31, 2020;[199] (2) continue to waive late payment fees through March 31, 2021;[200] (3) continue to waive credit reporting through March 31, 2021;[201] and, with Commission approval of an AAO, (4) waive re-connect fees through March 31, 2021.[202]

94. All signatories to the Agreement advise the Commission that they would

[197] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶16.
[198] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶16.
[199] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶16.
[200] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶18.
[201] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶18.
[202] Ex. 1: *Non-Unanimous Stipulation and Agreement*, ¶18.

support an AAO consistent with the Agreement if it did not include the requirements in paragraphs 16, 17, 18, which is the source of the affirmative obligations that would be imposed under the Agreement, as described above.[203]

95. OPC opposes approval of an AAO.[204]

96. As an alternative to denial of the application, OPC asks the Commission to require Evergy to (1) waive disconnection and reconnection fees for the duration of the AAO;[205] (2) cease full credit reporting for the duration of an AAO;[206] (3) waive late payment fees and deposit requirements for the duration of an AAO;[207] (4) offer a 12-month payment plan for the duration of an AAO;[208] and (5) offer an dollar-for-dollar arrearage matching program for eligible customers.[209] OPC proposes the cost of the arrearage matching program would be booked "below-the-line" and not eligible for recovery in rates.[210]

97. In contrast to OPC's position, NHT supports an AAO, but only with conditions requiring customer assistance measures and additional data collection and "public reporting."[211] NHT asks the Commission to order Evergy to: (1) create a "best-practices Arrearage Management Program" with specified eligibility and terms, funded at $2 million, divided between ratepayers and Evergy shareholders, modeled on the plan adopted in the

[203] Sierra Club's endorsement of an order without the provisions of paragraphs 16, 17 and 18 is the most limited. Sierra opines that an order "without its critical consumer protection provisions" would be "unfortunate," but Sierra Club "would likely not oppose" such an order because it excludes Evergy's request for "lost or unearned revenues." *Sierra Club's Initial Brief,* p. 28 (Dec. 4, 2020). Signatory statements affirming support for an order without those provisions may be found in the record as follows: Evergy: Transcript Vol. 3 at p. 349; Staff: *Initial Brief*, p. 22 (Dec. 4, 2020); *Missouri Industrial Energy Consumers' Initial Brief*, p. 3 (Dec. 4, 2020); *Initial Brief of Midwest Energy Consumers Group*, p. 39 (Dec. 4, 2020).
[204] *Public Counsel's Position Statement*, p. 3 (Sept. 16, 2020); Ex. 202: Marke Rebuttal, p. 2; *Initial Post-Hearing Brief of the Office of the Public Counsel*, p. 31 (Dec. 4, 2020).
[205] Ex. 202: Marke Rebuttal, p. 19.
[206] Ex. 202: Marke Rebuttal, p. 19.
[207] Ex. 202: Marke Rebuttal, p. 19.
[208] Ex. 202: Marke Rebuttal, p. 20.
[209] Ex. 202: Marke Rebuttal, p. 20-21.
[210] Ex. 202: Marke Rebuttal, p. 21.
[211] *Initial Post-Hearing Brief of the National Housing Trust*, p. 2 (Dec. 4, 2020) (brief is not page numbered; page references here exclude cover page).

Spire COVID-19 AAO;[212] (2) expand Evergy's Economic Relief Pilot Program (ERPP);[213] (3) enact a moratorium on disconnections for non-payment until 180 days after public availability of a COVID-19 vaccine;[214] (4) expend all approved income-based energy efficiency funds and contribute new usage reduction funds for customers in arrears;[215] and (5) suspend credit reporting of unpaid bills,[216] meet the needs of limited English-proficient customers[217] and "engag[e] in proper data collection and public reporting practices."[218] [219]

98. NHT's recommendations are not based specifically on Evergy's customers.[220] The record does not include information about additional employee training, customer communication materials, billing system modifications or additional costs associated with the proposed programs.[221]

99. Some of the recommendations by NHT and OPC with the greatest administrative burdens may not be possible to implement before the termination of the AAO on March 31, 2021.[222] The ERPP program is not prepared at this time to "ramp up" as recommended by NHT.[223]

[212] Ex. 1000: Colton Rebuttal, p. 64-67.
[213] Ex. 1000: Colton Rebuttal, p. 73-87.
[214] Ex. 1000: Colton Rebuttal, p. 42-53.
[215] Ex. 1000: Colton Rebuttal, p. 94-106.
[216] Ex. 1000: Colton Rebuttal, p. 106-7.
[217] Ex. 1000: Colton Rebuttal, p. 108-113.
[218] Ex. 1000: Colton Rebuttal, p. 114-16.
[219] *Initial Post-Hearing Brief of the National Housing Trust*, p. 4-5;
[220] Transcript Vol. 3 at 341; Ex. 1000: Colton Rebuttal, p. 8, 30-42.
[221] Transcript Vol. 3 at p. 339-42.
[222] Ex. 301: Meyer Surrebuttal, p. 7.
[223] Ex. 203: Marke Surrebuttal, p. 7.

Conclusions of Law

U. Commission authority does not extend to the general management of a utility.[224] The Commission may not impose on a utility's management discretion.[225]

V. "The Commission's powers are limited to those conferred by statute either expressly 'or by clear implication as necessary to carry out the powers specifically granted.'"[226]

Decision

The Agreement reached by some of the parties recites voluntary measures Evergy has taken to address the COVID-19 pandemic. In an effort to settle the parties' dispute about the proposed terms of an AAO, the Agreement includes promises by Evergy to provide additional customer assistance and to consult with some parties about further measures. The negotiations did not result in a unanimous agreement. Therefore, the Commission must make its own findings on each issue necessary to address Evergy's application.

While OPC opposes Evergy's application, it requests that if the Commission approves an AAO it should condition approval on additional actions that it recommends Evergy should be required to take to address the pandemic. NHT advances its own slate of interventions, which it proposes the Commission should impose as conditions.

The Commission encourages Evergy and other regulated utilities to respond appropriately to assist customers during the COVID-19 pandemic. However, the Commission will not extend the scope of this AAO proceeding to require particular measures as a condition of deferral accounting. Some of the programs proposed require

[224] *State ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm'n*, 262 U.S. 276, 289 (U.S. 1923).
[225] *State ex rel. Harline v. Pub. Serv. Comm'n*, 343 S.W.2d 177, 182 (Mo. App. 1960).
[226] *City of O'Fallon v. Union Elec. Co.*, 462 S.W.3d 438, 443-44 (Mo. App. W.D. 2015)(quoting *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 331 S.W.3d 677, 682 (Mo. App. W.D. 2011)).

far more comprehensive consideration than can be provided in this particular case or than was actually offered on the record. Therefore, the AAO granted in this case is not conditioned on customer assistance programs.

Because Evergy requested a Commission order that would allow it to apply an AAO for its 2020 books, and because Evergy must finalize its 2020 books at the end of January 2021 or mid-February 2021,[227] the Commission will make this order effective in 10 days.

Finally, the Commission will grant Evergy'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 Evergy's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before it filed its application.

THE COMMISSION ORDERS THAT:

1. Evergy's application for an AAO to accumulate and defer to a regulatory asset for consideration of recovery in future rate case proceedings extraordinary costs and financial impacts incurred as a result of the COVID-19 pandemic is granted in part and denied in part, as stated in this order.

2. Evergy is authorized to track and defer into a regulatory asset specified new and incremental costs caused by the COVID-19 pandemic, beginning March 1, 2020, and continuing through March 31, 2021, in accordance with this order.

3. Evergy's deferral authority is limited to categories of costs specified by this order, as stated in paragraphs 2 and 13 of the Agreement, as recited above.

[227] *Evergy Missouri Metro and Evergy Missouri West Response to Commission Order*, p. 1-2 (June 26, 2020).

4. Cost reductions caused by the COVID-19 pandemic shall be tracked and netted against the deferred costs recorded as a regulatory asset, as stated in paragraph 7 of the Agreement and as stated above.

5. In addition, any savings from reduced allocation of costs from shared services or parent organizations caused by the COVID-19 pandemic shall be included among cost reductions tracked and netted against deferred costs recorded as a regulatory asset pursuant to this order.

6. Deferral of increased bad debt expense due to COVID-19 is authorized only to the extent total bad debt expense exceeds levels included in the cost of service, as stated in paragraphs 2 and 4 of the Agreement.

7. Deferral of waived fee revenues is authorized only up to the amount included in rates related to waived late payment fees and waived reconnection fees included in rates, as stated in paragraphs 2 and 4 of the Agreement.

8. All costs and cost reductions shall be tracked and reported separately for Evergy Missouri West and Evergy Missouri Metro, as stated in paragraphs 3 and 7 of the Agreement.

9. Evergy shall comply with the reporting requirements stated in the Agreement at paragraphs 9, 10, 11 and 12.

10. Within two weeks after the effective date of this order, Evergy shall file an initial report in this case, as proposed by the Agreement. Updated reports shall be filed quarterly within 45 days of the end of each quarter until all costs and savings through March 31, 2021, are accounted for in an updated report.

11. Initial and updated reports shall identify all cost increases and decreases related to the pandemic identified to date and shall include a list of COVID-19 related expenses and the respective amounts incurred to ensure safe and reliable service.

12. Initial and updated reports shall report all categories identified in paragraph 9 of the Agreement, as recited above.

13. Within 30 days after the effective date of this order, Evergy shall file in this case copies of the applicable policies and procedures intended to govern how monthly deferral amounts are to be calculated for each category. Such policies and procedures shall include a proposed monthly reporting format, as stated in paragraph 13 of the Agreement.

14. This order does not limit the ability of any party to propose or oppose certain ratemaking treatment of carrying costs related to this AAO in Evergy's next general rate cases.

15. This order does not authorize deferral of any lost revenues from reduced customer usage or lost fixed costs due to the pandemic.

16. Nothing in this order shall constitute a finding or conclusion by the Commission concerning the reasonableness of any amount deferred, and the Commission reserves the right to consider the ratemaking treatment to be afforded any deferred amount.

17. Extension of this order may be sought by application to the Commission.

18. The *Non-Unanimous Stipulation and Agreement*, admitted to the record as Exhibit 1, will be attached to this order for reference only.

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

20. This report and order shall be effective on January 23, 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

Missouri Landowners Alianace, and Eastern Missouri Landowners Aliance DBA Show Me Concerned Landowners, and John G. Hobbs	)	
Complainants,	)	
v.	)	**File No. EC-2021-0034**
Grain Belt Express LLC, Invenergy Transmission LLC, and Invenergy Investment Company, LLC,	)	
Respondents.	)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

The Commission may interpret its own orders and ascribe to them a proper meaning. Denial of the power of the Commission to ascribe a proper meaning to its orders would result in confusion and deprive it of power to function.

§23. Notice and hearing

The parties agreed that the issue in this Complaint is limited to whether Grain Belt Express LLC is required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4. They submitted stipulated facts and agreed to submit this issue on their briefs. Thus, the parties agreed to waive a right to a hearing.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, and John G. Hobbs,	)	
Complainants,	)	
v.	)	**File No. EC-2021-0034**
Grain Belt Express LLC, Invenergy Transmission LLC, and Invenergy Investment Company, LLC,	)	
Respondents.	)	

REPORT AND ORDER

Issue Date: January 20, 2021

Effective Date: February 19, 2021

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, and John G. Hobbs,	)	
Complainants,	)	
v.	)	**File No. EC-2021-0034**
Grain Belt Express LLC, Invenergy Transmission LLC, and Invenergy Investment Company, LLC,	)	
Respondents.	)	

Appearances

Paul A. Agathen
Attorney for Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners, and John G. Hobbs

Anne E. Callenbach
Andrew O. Schulte
Attorneys for Grain Belt Express, LLC; Invenergy Investment Company, LLC And Invenergy Transmission, LLC.

Travis J. Pringle
Attorneys for the Staff of the Commission

Judge: Paul T. Graham

REPORT AND ORDER

I. Procedural History

On June 22, 2020,[1] Missouri Landowners Alliance and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners and John G. Hobbs (Complainants) filed a complaint against Grain Belt Express LLC, Invenergy Transmission LLC, and Invenergy Investment Company LLC (Grain Belt).[2] It alleged violations of the Commission's Report and Order on Remand issued in File No. EA-2016-0358 on March 20, 2019 (CCN Order).[3] Per the Complaint, the Certificate of Convenience and Necessity (CCN) authorized construction of an electric transmission line across eight counties in northern Missouri.[4] This project required the acquisition of easements from affected landowners.[5] The Complainants allege the 2019 CCN Order required Grain Belt

[1] All date citations will be to 2020 unless otherwise stated. All citations to the Missouri Revised Statutes will be to 2016.

[2] This Order will refer to the Respondents together as "Grain Belt" or refer to them individually as may be dictated by the context. The order will refer to Invenergy Transmission LLC and Invenergy Investment Company together as "Invenergy" or refer to them individually as may be dictated by the context.

[3] Section 536.070 (6), RSMo, permits an administrative agency to "take official notice of all matters of which the courts take judicial notice." It is well settled law that courts may, and should, "take judicial notice of their own records in prior proceedings which are between the same parties on the same basic facts involving the same general claims for relief." *Moore v. Missouri Dental Bd*., 311 S.W.3d 298, 305-306 (Mo. App. W.D. 2010); *Chandler v. Hemeyer*, 49 S.W.3d 786, 791 792 (Mo. App. W.D. 2001); *State ex rel. Callahan v. Collins,* 978 S.W.2d 471, 474 (Mo. App. W.D. 1998); *Meiners Co. v. Clayton Greens Nursing Ctr., Inc.,* 645 S.W.2d 722, 724 (Mo. App. E.D. 1982); *Hardin v. Hardin,* 512 S.W.2d 851, 854 (Mo. App. K. C. Dist. 1974). *See also State v. Hurst,* 845 S.W.2d 669, 670 (Mo. App. E.D. 1993); *Schrader v. State,* 561 S.W.2d 734, 735 (Mo. App. K.C. Dist. 1978).

On September 1, 2020, the parties filed a Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule. Therein, the parties stipulated that in their respective legal briefs they could cite to any portion of the record in the CCN case in support of their arguments and that the single issue to be decided was whether, as a condition of the CCN granted to Respondent in the CCN case, Grain Belt is required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceeding.

The Commission will officially notice the Report and Order on Remand issued on March 20, 2019, in File No. EA-2016-0356 (the 2019 CCN Order or CCN Order) together with its Attachments 1 and 2; and Exhibit 113 from the CCN Order, together with Exhibit 113's Schedules DKL-1 (the Missouri Landowner's Protocol); DKL-2 (the Code of Conduct); and DKL-4 (the standard easement agreement).

[4] Complaint, paragraph 5.

[5] See Complaint, generally.

to initiate easement acquisition negotiations using a standard form of agreement which was attached as Schedule DKL-4 to Exhibit 113 ("DKL-4 Easement Agreement," "original easement agreement," or "standard easement agreement") in the CCN Order.[6] Complainants allege Grain Belt is violating the CCN Order by beginning negotiations with a revised easement agreement ("Revised Easement Agreement") that differs materially from the DKL-4 Easement Agreement.[7]

The Commission issued a Notice of Formal Complaint and Order Directing Staff to File a Preliminary Report. On September 1, the parties filed a Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule. The Joint Motion stated the parties had agreed and stipulated to submitting this case to the Commission on briefs per the following:

(A) In their recent easement negotiations with Missouri landowners for easements on the proposed right-of-way of the Grain Belt line, Invenergy's land agents have presented landowners with easement agreements in the form of that attached as Exhibit 2 to the Complaint, and/or the form of easement agreement attached as Exhibit 1 to the Joint Motion to Suspend Current Deadline and Establish a Briefing Schedule. The land agents are not currently presenting landowners with the form easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceedings;

(B) In their respective legal briefs, Joint Movants may cite to any portion of the record in the CCN case to support their arguments; and

(C) Joint Movants agree that the issue in this Complaint is limited to whether, as a condition of the CCN granted to Respondents in the CCN case, Grain Belt is required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceeding.

[6] Complaint, paragraphs 13, 14, and 15.
[7] Complaint, paragraphs 13, 14, and 15.

On September 15, the Commission Staff, Grain Belt and Complainants filed their initial briefs. On September 30, they filed their reply briefs. On October 12, Grain Belt filed a Motion to Dismiss Formal Complaint. On October 15, the Complainants filed their Opposition to Respondents' Motion to Dismiss. The Commission will review the parties' briefs and the record in the CCN case to decide the case on the merits as requested in the Joint Motion.[8]

II. Findings of Fact

1. Grain Belt Express Clean Line LLC was issued a CCN on March 20, 2019.[9] The CCN authorized the construction of an approximately 780-mile, overhead, multi-terminal +600 kilovolt high-voltage, direct current transmission line and associated facilities (collectively here referred to as the Project).[10]

2. The CCN Order made the following findings of fact:

[8] The Commission has officially noticed the Report and Order on Remand in EA-2016-0358 (CCN Order) with its Attachments 1 and 2; and Exhibit 113 from that case, with its Schedules DKL 1, 2 and 4. By way of further description:

1) Attachments 1 and 2, are attached and incorporated by reference to the CCN Order per its Ordering Paragraphs 2 and 3. Page 51. In the CCN Order, Attachment 1 is also referred to as Exhibit 206, which is entitled "Conditions Agreed to by Grain Belt Express Clean Line LLC and the Staff of the Missouri Public Service Commission." In the CCN Order, Attachment 2 is also referred to as Exhibit 205. Exhibit 205 is entitled "Grain Belt Express Response to Rockies Express Pipeline LLC's First Set of Data Requests to Grain Belt Express Clean Line LLC." Per the CCN's Ordering Paragraphs 2 and 3, p. 51, Attachments 1 and 2 are the express conditions of the CCN, and Grain Belt Express Clean Line LLC is ordered to comply with them.
2) Exhibit 113 is not attached to the CCN Order. It is the direct testimony of Deann Lanz. Exhibit 113 is cited in the CCN Order in Findings of Fact 19, 20, 21, 109, 110, and 111 (pp. 12, 32 and 33). In her testimony, page 4 of Exhibit 113, Deann Lanz identifies the Missouri Landowner Protocol as Schedule DKL-1. She identifies the Code of Conduct as DKL-2 at page 4 of her testimony. She identifies the standard form of agreement used by Grain Belt as Schedule DKL-4 at page 15 of her testimony. Schedules DKL 1 through 4 are attached to Exhibit 113.
3) The CCN Order references Schedule DKL-4 at footnote 35 and 36 (Findings of Fact 19 and 20). p. 12. Neither the CCN Order's Ordering Paragraphs, Schedule DKL-1, nor Schedule DKL-2, however, reference Schedule DKL-4 directly or indirectly.
4) The CCN Orders Ordering paragraph 8, p. 52, orders Grain Belt Express Clean Line LLC to comply with the Missouri Landowner Protocol and the Code of Conduct.

The information contained in this footnote will be reiterated in the Findings of Fact as may be necessary to the Commission's Decision.

[9] File EA-2016-0358 ("CCN Order").

[10] 2019 CCN Order, Findings of Fact, II. A. 4 at p 8.

a. Paragraph 19:

> Grain Belt uses a standard form of agreement when acquiring easement rights from Missouri landowners.[11] The agreement includes the right to construct, operate, repair, maintain, and remove an overhead transmission line and related facilities, along with rights of access to the right-of-way for the transmission line. The standard form of agreement was attached as Schedule DKL-4 to Ex. 113,[12]

b. Paragraph 109:

> Grain Belt developed the Missouri Landowner Protocol[13] as part of its approach to right-of-way acquisitions for the Project. The Landowner Protocol is a comprehensive policy of how Grain Belt Express interacts, communicates, and negotiates with affected landowners and includes: the establishment of a code of conduct, its approach to landowner and easement agreement negotiations, a compensation package, updating of land values with regional market studies, tracking of obligations to landowners, the availability of arbitration to landowners, the Missouri Agricultural Impact Mitigation Protocol, and a proposed decommissioning fund.

c. Paragraph 121:

> Grain Belt has agreed to incorporate the Missouri Landowner Protocol into the easement agreements with landowners and follow the protocol as a condition to the CCN.[14]

3. Paragraph 19 of the Commission's CCN Order's Findings of Fact cited to Exhibit 113, the testimony of Deann Lanz.[15] The parties here have agreed that the issue in this Complaint is limited to whether, as a condition of the CCN granted to Respondents in the CCN case, Grain Belt is required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN

[11] Ex. 113, Lanz Direct Testimony, p. 15-16, Schedule DKL-4
[12] Deann Lanz's Direct testimony referenced it as such in the 2019 CCN case. See Paragraphs 19, 20 and 109 of the 2019 CCN Order's findings of fact, pp. 12; 32-33.
[13] References hereinafter to the "Protocol" will be to the Missouri Landowner Protocol unless otherwise indicated.
[14] 2019 CCN Order, Finding of Fact 121, p. 35.
[15] Exhibit 113, Lanz Direct Testimony, p. 1, ll. 3-4.

proceeding. Per Exhibit 113, Ms. Lanz's testimony in the CCN case, the Commission makes the following findings of fact:

a. Ms. Lanz testified in the CCN case:

> Grain Belt Express has a standard form of agreement, the Transmission Line Easement Agreement ('Easement Agreement'), that it will present to landowners. It is attached as Schedule DKL-4. The Easement Agreement provides for the development, financing and safe construction and operation of the Project, and is broad enough to cover most situations and concerns raised by landowners, without making such Easement Agreement overly burdensome or lengthy.[16]

b. Ms. Lanz testified in the CCN case:

> The Easement Agreement is not meant to be "one size fits all" for every situation. Because each parcel of land is unique and because some landowners may have specific concerns that other landowners may not, Grain Belt Express has previously negotiated reasonable modifications to the Easement Agreement with both landowners and their attorneys.[17]

4. The 2019 CCN Order in its Ordering Paragraphs required the following:

> Grain Belt Express Clean Line LLC shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct and the Missouri Agricultural Mitigation Impact Protocol, and incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.[18]

5. In the CCN's Ordering Paragraphs 2 and 3, the CCN order expressly approved, adopted and ordered Grain Belt to comply with the conditions of Exhibits 206 and 205, attached to the CCN Order, respectively, as Attachments 1 and 2.[19] Attachment

[16] Exhibit 113, Lanz, Direct Testimony, p. 15, ll. 12-21., cited in the CNN Order's Findings of Fact, paragraph 19, footnote 35, p. 12.
[17] Exhibit 113, Lanz, Direct Testimony, p. 15, ll. 17-21.the CNN Order cited generally to p.15 of the testimony at footnote 35, Finding of Fact numbered 19, p. 12.
[18] 2019 CCN Ordering Paragraph 8, p. 52.
[19] CCN Order, Ordering Paragraphs 2 and 3, p. 51. Attachment 1, Exhibit 206, is a six-page document entitled Conditions Agreed to by Grain Belt Express Clean Line LLC and the Staff of the Missouri Public Service Commission. It contains sections entitled, respectively, Financing Conditions; Interconnection Studies and Safety; Nearby Utility Facilities; Emergency Restoration Plans; Construction and Clearing; Maintenance and Repair; and Landowner Interactions and Right-of-Way Acquisition.

1 contained conditions concerning financing, interconnection studies and safety, nearby utility facilities, emergency restoration plans, construction and clearing, maintenance and repair, landowner interactions and right-of-way acquisition. Attachment 2, is entitled Grain Belt Express Response to Rockies Express Pipeline LLC's[20] First Set of Data Requests to Grain Belt Express Clean Line LLC and contains Grain Belt's responses to data requests concerning risks to the safety or integrity of REX pipelines, the timing of studies on the potential impacts of the Project, the timing when Grain Belt will give REX notice of the staging of the Project, the sharing of Grain Belt's technical information with REX, Grain Belt's responsibility for the costs of any steps necessary to mitigate the effects of the Project on REX, and Grain Belt's responsibility for all direct damages caused by the Project to REX,

6. In the CCN Order's Ordering Paragraph 8, the CCN Order expressly ordered Grain Belt to comply with the Missouri Landowner Protocol (Schedule DKL-1) and the Code of Conduct (Schedule DKL-2) and to incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.[21]

7. Neither Exhibit 205 nor 206 of the CCN Order mentions the Schedule DKL-4 Easement Agreement or the testimony of Deann Lanz. Neither Exhibit prescribes the form or content of an easement agreement except to state the agreement should pertain to the land in question and contain a drawing that shows the location of the easement.[22] Neither exhibit states that Grain Belt must initiate easement negotiations

[20] Hereinafter "REX."
[21] 2019 CCN Order, Ordering Paragraph 8, p. 52.
[22] 2019 CCN Order, Attachment 1, p. 6, paragraph VII (4).

with the Schedule DKL-4 Easement Agreement. Neither Schedule DKL 1 nor 2 mentions or refers indirectly to the Schedule DKL-4 Easement Agreement.

8. In their recent easement negotiations with Missouri landowners for easements on the proposed right-of-way of the Grain Belt line, Invenergy's land agents have presented landowners with easement agreements in the form of that attached as Exhibit 2 to the Affidavit of John G. Hobbs, which is attached to the Complaint.[23] The land agents are not currently presenting landowners with the form easement agreement marked as Schedule DKL-4 to Exhibit 113 in the CCN proceedings.

III. Conclusions of Law

A. As companies owning, operating, controlling or managing a plant for selling or supplying electricity for gain, Respondents are public utilities subject to the jurisdiction, control and regulation of the Commission.[24] Respondents are "electrical corporations" as defined by section 386.020(15), RSMo.

B. Section 386.390.1, RSMo, permits any person to make a complaint to the Commission 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. . . ."

C. Section 386.390.5, RSMo, states that the Commission shall fix a time and place for a hearing on a Complaint. The requirement for a hearing in a contested case is met, however, when the opportunity for hearing is provided and no proper party requests

[23] The findings in this paragraph are per the parties' stipulations in the Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule, Part II. Joint Stipulations. The Schedule DKL-4 easement agreement will be attached to this Order as Exhibit A. The easement agreement which Complainants challenge and which is attached to the Complaint and the affidavit of John G. Hobbs is attached to this Order as Exhibit B.
[24] Section 386.020 (15) and (43), RSMo.

the opportunity to present evidence.[25] The parties have agreed that the issue in this Complaint is limited to whether, as a condition of the CCN granted to Respondents in the CCN case, Grain Belt is required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4.[26] They have submitted stipulated facts and agreed to submit this issue on their briefs.[27] Thus, the parties have agreed to waive a right to a hearing.

D. The Commission may interpret its own orders and ascribe to them a proper meaning.[28] "Denial of the power of the commission to ascribe a proper meaning to its orders would result in confusion and deprive it of power to function."[29] "Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."[30] In the absence of a given definition in a regulation, a word or term will be given its plain and ordinary meaning as derived from a dictionary.[31] "It is inappropriate to defer to an agency's interpretation of its own regulation that in any way expanded upon, narrowed, or was otherwise inconsistent with the plain and ordinary meaning of the words used in the regulation."[32]

[25] *State ex rel. Rex Deffenderfer v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).
[26] Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule, II. (c), Joint Stipulations filed September 1, 2020.
[27] Joint Motion to Suspend Current Deadlines and Establish a Briefing Schedule.
[28] *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 34 (Mo. App. W.D. 2012).
[29] *State ex rel Orscheln Bros. Truck Lines v. Pub. Serv. Comm'n*, 110 S.W.2d 364, 366 (Kansas City Court of Appeals, 1937).
[30] Section 1.090, RSMo.
[31] *Deaconess Manor Ass'n v. Pub. Serv. Comm'n of State of Mo.,* 994 S.W.2d 602, 609 (Mo. App. W.D. 1999).
[32] *Matter of Trenton Farms Re, LLC v. Missouri Dept. of Nat. Res.,* 504 S.W.3d 157, 164 (Mo. App. W.D. 2016).

IV. Decision

The CCN Order required Grain Belt to comply with the conditions identified in Exhibits 206 or 205, which were adopted by and made a part of the CCN Order in its Ordering Paragraphs 2 and 3 as, respectively, Attachments 1 and 2.[33] Neither Attachment 1 nor 2 mentions the Schedule DKL-4 Easement Agreement or the testimony of Deann Lanz. Neither Attachment prescribes the form or content of an easement agreement except to state the agreement should pertain to the land in question and contain a drawing that shows the location of the easement.[34] Neither Attachment states that Grain Belt must initiate easement negotiations with the Schedule DKL-4 Easement Agreement. The use of the Schedule DKL-4 Easement Agreement is simply never mentioned as a condition of the CCN.

The CCN Order's Findings of Fact went to some length and into detail in describing Grain Belt's use of a standard form of agreement,[35] the Missouri Landowner Protocol and its application to easement agreement negotiations,[36] the incorporation of that Protocol into its easement agreements[37] and the requirement that Grain Belt follow the Protocol as a condition of the CCN.[38] While the Ordering Paragraphs then ordered compliance with the Protocol (Schedule DKL 1) and the Code of Conduct (Schedule DKL 2),[39] the Ordering Paragraphs did not expressly condition the CCN on the use of the DKL-4 Easement Agreement or otherwise require its use; nor did the Protocol or Code of

[33] 2019 CCN Order, p. 51, Ordering Paragraphs number 2 and 3, referencing the CCN Order's Attachments 1 and 2, which are, respectively, Exhibits 206 and 205.
[34] 2019 CCN Order, Attachment 1, p. 6, paragraph VII (4).
[35] 2019 CCN Order, Findings of Fact 19, p. 12.
[36] 2019 CCN Order, Findings of Fact, 109, p. 32.
[37] 2019 CCN Order, Findings of Fact 120, p. 35.
[38] 2019 CCN Order, Findings of Fact 35, p. 15.
[39] 2019 CCN Order, Ordering Paragraph 8, p. 52.

Conduct, whose use the CCN Order's Ordering Paragraphs expressly required, even mention the DKL-4 Easement Agreement.

That the Commission expressly required the use of both the Missouri Landowner Protocol and the Code of Conduct, but not the DKL-4 Easement Agreement in its Ordering Paragraphs is consistent with the differing natures of these documents. The Protocol and Code of Conduct, on the one hand, govern Grain Belt's relationships and conduct in dealing with landowners in the course of easement negotiations. In contrast to the Schedule DKL-4 Easement Agreement, the Protocol and Code of Conduct represent requirements guiding every landowner interaction. The Commission ordered Grain Belt to treat all landowners as set out in the Protocol and Code of Conduct. On the other hand, "[b]ecause each parcel of land is unique and because some landowners may have specific concerns that other landowners may not," the Schedule DKL-4 Easement Agreement was "not meant to be 'one size fits all' for every situation."[40] Thus, the Commission, on the one hand, by mandating the use of the Protocol and Code of Conduct, made how Grain Belt was to treat all landowners during negotiations an express condition of the CCN. The Commission, on the other hand, did not mandate or restrict Grain Belt as to what terms to offer in the course of negotiations, except to require that each agreement expressly pertain to the land and contain a drawing of the easement location in question.

Complainants ask the Commission to enlarge upon the CCN Order's conditions by looking to the Order's Findings of Fact. The term "condition," as the Commission uses it in the context of CCNs, generally has a special, technical meaning and refers to

[40] Exhibit 113, CCN Order, Testimony of Deann Lanz, pp. 15, ll. 17-21.

limitations and duties expressly designated as "conditions." Where there is no ambiguity about the term "condition" in this case, the Commission will not use the CCN Order's Findings of Fact about Grain Belt's use of a standard easement agreement to infer one. On the record in this case, the Commission sees no basis for finding that as used in the CCN Order, the term "condition" means something different and broader than the meaning ordinarily ascribed to the term by this Commission. It is the Commission's decision that the CCN Order did not require Grain Belt to initiate negotiations with landowners with the Schedule DKL-4 Easement Agreement. Therefore, the Complaint will be denied.

THE COMMISSION ORDERS THAT:

1. The Complaint brought on June 22, 2020, by Missouri Landowners Alliance and Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners and John G. Hobbs against Grain Belt Express LLC, Invenergy Transmission LLC, and Invenergy Investment Company LLC, is denied.

2. The Motion to Dismiss filed by Invenergy is dismissed as moot.

3. The Commission Data Center shall file the following documents from File EA-2016-0358 through EFIS in the official record of this file. These documents shall be deemed a part of the official record in this file and are herewith received into evidence:

- Report and Order on Remand together with its incorporated Attachments 1 (Exhibit 206) and 2 (Exhibit 205).[41]
- Exhibit No. 113, Direct Testimony of Deann K. Lanz, together with its attached Schedules DKL-1, DKL-2 and DKL-4.[42]

[41] EA-2016-0358 EFIS 758
[42] EA-2016-0358, EFIS 372.

4. This Order shall be effective on February 19, 2021.

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 Ameren Transmission Company of Illinois for a Certificate of Convenience and Necessity Authorizing it to Operate and Maintain an Interconnection of the High Prairie Wind Project with the Mark Twain Transmission Line	))))))	**File No. EA-2021-0167**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§11. When a certificate is required generally

The Commission found that good cause exists to waive the requirements to file reports pursuant to 20 CSR 4240-10.145, 20.105, 3.175, or 3.190, because the applicant for a certificate of convenience and necessity does not serve retail customers in Missouri.

§11. When a certificate is required generally
§42. Electric and power
§48. Operations under terms of the certificate generally

Certificate of convenience and necessity granted for an electric transmission line may not necessarily include approval of switchyards or switching stations.

PUBLIC UTILITIES

§7. Jurisdiction and powers of the State Commission

The Commission may grant a variance from or waive a requirement of Commission rules for good cause.

§7. Jurisdiction and powers of the State Commission

The Commission found that good cause exists to waive the requirements to file reports pursuant to 20 CSR 4240-10.145, 20.105, 3.175, or 3.190, because the applicant for a certificate of convenience and necessity does not serve retail customers in Missouri.

§7. Jurisdiction and powers of the State Commission

The Commission may allow an order to go into effect in fewer than 30 days for good cause if an application for a certificate of convenience and necessity is unopposed and the Commission does not wish to delay a project.

§7. Jurisdiction and powers of the State Commission

The Commission found good cause existed for waiver of the Commission's 60-day prefiling notice rule, based on an applicant's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before the applicant filed its application.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 10th day of February, 2021.

In the Matter of the Application of Ameren Transmission Company of Illinois for a Certificate of Convenience and Necessity Authorizing it to Operate and Maintain an Interconnection of the High Prairie Wind Project with the Mark Twain Transmission Line	))))))	**File No. EA-2021-0167**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: February 10, 2021 Effective Date: February 20, 2021

Ameren Transmission Company of Illinois (ATXI) on December 11, 2020, applied for an order declining jurisdiction or, alternatively, a certificate of convenience and necessity (CCN) to operate and maintain a switchyard[1] in Schuyler County, Missouri, ("Hughes Switchyard"[2]) to connect the High Prairie Wind Generation Facility with the Mark Twain Transmission Line operated by ATXI. ATXI also requested waiver of the 60-day notice requirement under 20 CSR 4240-4.017 and expedited treatment, with an order no later than 90 days after the date of application. The Commission received no requests to intervene in this case.

On January 19, 2021, the Staff of the Commission (Staff) recommended that the Commission should grant ATXI a CCN to operate and maintain the Hughes Switchyard.

[1] A switchyard may also be referred to as a "switching station." *See Staff's Recommendation to Approve Application, Appendix A: Memorandum*, p. 3 (Jan. 19, 2021).

[2] Documents attached to ATXI's application, including the Generator Interconnection Agreement (Appendix F) and plans and specifications (Appendix G), refer to the switchyard or switching station as the "Hughes switchyard" and "Hughes switching station." *See Application of ATXI for Order Declining Jurisdiction or, Alternatively, Granting a CCN to Operate and Maintain an Interconnection*, File No. EA-2021-0167 (Dec. 11, 2020).

On February 4, 2021, ATXI filed a response to Staff's recommendation and requested the Commission grant the CCN in accordance with Staff's recommendation.[3]

Both the Mark Twain Transmission Line and High Prairie Wind Generation Facility are subject to the Commission's jurisdiction and approval. In January 2018, pursuant to a unanimous stipulation and agreement, the Commission granted ATXI a CCN for the Mark Twain Transmission Line in Marion, Knox, Adair, Schuyler and Lewis counties.[4] In October 2018, also pursuant to an agreement, the Commission granted Union Electric Company d/b/a Ameren Missouri a CCN to construct and operate a wind generation facility to be constructed in Schuyler and Adair counties.[5] ATXI's application identifies that facility as the High Prairie Wind Generation Facility ("High Prairie"). According to ATXI's application, High Prairie will connect to the Mark Twain Transmission Line at the Hughes Switchyard, which is located in Schuyler County on land "contiguous to" the Mark Twain line.[6]

As Staff's recommendation observes, the Commission has previously determined a CCN granted for an electric transmission line may not necessarily include approval of switchyards or switching stations.[7] No objections to Staff's recommendation have been received, and the time for response has expired.[8] The Commission will take up ATXI's

[3] *ATXI's Response to Staff Recommendation*, ¶ 3 (Feb. 4, 2021).
[4] *Order Approving Unanimous Stipulation and Agreement*, File No. EA-2017-0345 (Jan. 10, 2018).
[5] *Order Approving Third Stipulation and Agreement*, File No. EA-2018-0202 (Oct. 24, 2018).
[6] *Application of ATXI for Order Declining Jurisdiction or, Alternatively, Granting a CCN to Operate and Maintain an Interconnection*, File No. EA-2021-0167, p. 3-4 (Dec. 11, 2020).
[7] *See Order Granting Certificate of Convenience and Necessity*, File No. EA-2016-0190 (Oct. 5, 2015) (granting CCN for "switch station" to connect Osborn Wind Energy Center to Sibley-Nebraska City transmission line); *Order Granting Certificate of Convenience and Necessity*, File No. EA-2016-0188 (April 6, 2016) (granting CCN for "switch station" to connect Rock Creek Wind Project to Sibley-Nebraska City line). The Commission had previously approved the Sibley-Nebraska City transmission line with a CCN granted in August 2013. *Report and Order*, File No. EA-2013-0098 (Aug. 7, 2013).
[8] Commission Rule 20 CSR 4240-2.080(13) allows parties 10 days to respond to pleadings unless otherwise ordered by the Commission. Any 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).

application unopposed.

ATXI is an electrical corporation and a public utility subject to Commission jurisdiction.[9] The Commission may grant an electrical corporation a certificate of convenience and necessity after determining that the subject project is "necessary or convenient for the public service."[10] The Commission has stated five criteria 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.[11]

Staff advises ATXI's application for a CCN satisfies these standards, which are often referred to as the "Tartan" criteria or factors. The Hughes Switchyard is necessary to connect High Prairie to the Mark Twain line, as is anticipated by the governing Generator Interconnection Agreement (GIA).[12] ATXI is qualified to operate the switching station and has an established record of service. ATXI has demonstrated its financial ability in that the $9.6 million Hughes Switchyard was built with funds from ATXI's treasury. Economic feasibility is demonstrated by ATXI's established qualifications and service record, the company's funding of the switchyard's construction, and the fact that High Prairie is responsible for connection costs. For those reasons, Staff proposes the public interest is served by approval of a CCN.

[9] Section 386.020(15), (43), RSMo (Cum. Supp. 2019).
[10] Section 393.170.3, RSMo (2016).
[11] *In re Tartan Energy Co.*, File No. GA-94-127, 3 Mo. P.S.C. 173, 177 (Oct. 7, 1994).
[12] The GIA is attached as Appendix F to ATXI's application in this case.

Based on the verified pleadings and Staff's recommendation, the Commission finds the application for a certificate of convenience and necessity to operate and maintain the Hughes Switchyard meets the stated criteria and is necessary and convenient for the public service. The Commission will grant the application.

As ATXI's application notes, the Commission's order granting a CCN for the Mark Twain Transmission Line waived ATXI's reporting obligations under certain Commission rules because ATXI does not serve retail customers in Missouri.[13] The Commission's order in that case approved a unanimous stipulation and agreement, which provided for waiver of certain rules[14] and also required ATXI to file with the Commission the annual report the company files with the Federal Energy Regulatory Commission.[15] The Commission may grant a variance from or waive a requirement of Commission rules for good cause.[16] As recommended by Staff and requested by ATXI,[17] the Commission finds good cause exists because ATXI does not serve retail customers in Missouri. This order will provide for the same reporting waivers as the order that granted ATXI a CCN for the Mark Twain line.

Because the application is unopposed and the Commission does not wish to delay the project, the Commission will allow this order to go into effect in fewer than 30 days.

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[13] *Order Approving Unanimous Stipulation and Agreement*, File No. EA-2017-0345, p. 7 (Jan. 10, 2018). *See also Application of ATXI for Order Declining Jurisdiction or, Alternatively, Granting a CCN*, ¶5 n.1 (Dec. 11, 2020).

[14] The rule provisions waived in the Mark Twain CCN order, as they are cited in the Commission's current rules, are 20 CSR 4240-3.175 (submission of depreciation studies), 20 CSR 4240-3.190(1),(2),(3)(A)-(D) (reporting of certain generating unit events), 20 CSR 4240-10.145 (submission of an annual report), and 20 CSR 4240-20.105 (filing of rate schedules).

[15] *Order Approving Unanimous Stipulation and Agreement*, File No. EA-2017-0345, Exhibit 1: Unanimous Stipulation and Agreement, ¶5(f) (Jan. 10, 2018).

[16] 20 CSR 4240-2.205; *see also* 20 CSR 4240-3.175(2) and 20 CSR 4240-3.190(10).

[17] ATXI's application does not expressly request waiver of these reporting rules, but ATXI's response to Staff's recommendation requests that the Commission grant the waivers as recommended by Staff. *ATXI's Response to Staff Recommendation*, ¶3 (Feb. 4, 2021).

Finally, the Commission will grant ATXI'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 ATXI's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before ATXI filed its application.

THE COMMISSION ORDERS THAT:

1. ATXI is granted permission, approval, and a certificate of convenience and necessity to operate and maintain the Hughes Switchyard.

2. ATXI's obligations under Commission rules 20 CSR 4240-3.175, 20 CSR 4240-3.190(1),(2),(3)(A)-(D), 20 CSR 4240-10.145 and 20 CSR 4240-20.105 are waived, except that ATXI remains obligated to file with the Commission the annual report it files with the Federal Energy Regulatory Commission.

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

4. This order shall be effective on February 20, 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 Spire Missouri Inc.'s d/b/a	)	
Spire Request for Authority to Implement a	)	**File No. GR-2021-0108**
General Rate Increase for Natural Gas	)	
Service Provided in the Company's	)	
Missouri Service Areas	)	

ORDER DENYING APPLICATION TO INTERVENE

EVIDENCE, PRACTICE AND PROCEDURE

§22. Parties

The Commission rejected a late-filed application to intervene as it did not meet the requirements of rule 20 CSR 4240-2.075(10) that late-filed motions to intervene include a showing of good cause. As the applying intervenor did not include a statement expressing good cause for the late-filing, the Commission could not grant the intervention.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by telephone and internet audio conference on the 10th day of February, 2021.

In the Matter of Spire Missouri Inc.'s d/b/a Spire Request for Authority to Implement a General Rate Increase for Natural Gas Service Provided in the Company's Missouri Service Areas	)))))	**File No. GR-2021-0108** Tracking No. YG-2021-0133

ORDER DENYING APPLICATION TO INTERVENE

Issue Date: February 10, 2021 Effective Date: February 20, 2021

Spire Missouri Inc. d/b/a Spire submitted tariff sheets on December 11, 2020, to implement a general rate increase for natural gas service. On December 23, 2020, the Commission provided notice of Spire's application and set a deadline of January 12, 2021, for applications to intervene.

On January 25, 2021, Missouri Propane Gas Association (MPGA) late-filed an application to intervene. MPGA stated that it is a not-for-profit trade association representing local propane provider members and affiliated businesses who sell propane or propane appliances and equipment. MPGA stated its interests are different than those of the general public in that its members compete with natural gas utilities for customers, and as such its members may be affected by a final order in this proceeding. MPGA indicates that it objects to Spire's proposed Growing Missouri Program on market competition grounds.

On February 4, 2021, Spire objected to MPGA's application to intervene. Spire argues the application to intervene does not show an interest different from that of the

general public, or an interest which may be adversly affected by a final order in this proceeding. Spire also stated that the public interest would not be served by the application to intervene. Spire defended its Growing Missouri Program and stated that the program would not interfere with market competition. On February 8, 2021, MPGA responded to Spire's objection. MPGA asserted that approval of its intervention request would be in the public interest.

Applications to intervene are governed by Commission Rule 20 CSR 4240-2.075, which in subsection (3) requires either: a showing of an interest different than that of the general public which may be adversely affected by a final order; or a showing that granting the intervention would serve the public interest. Late-filed applications are addressed in subsection (10), which provides in part, "Motions to intervene…filed after the intervention date may be granted upon a showing of good cause."

MPGA has not included a statement explaining why there is good cause to accept its late-filed motion. In its application to intervene, MPGA stated that it acted as expeditiously as possible, but did not provide a reason to support its statement.[1] In its later response, MPGA again stated that it acted as expeditiously as possible to submit the application to intervene up learning of Spire's application, but again did not explain why it was late.[2] Without an explanation as to why the application to intervene was late-filed and upon which the Commission could base a finding of good cause, the Commission cannot find good cause exists to allow the late intervention. The Commission will deny MPGA's application to intervene.

[1] Application to Intervene Out of Time of the Missouri Propane Gas Association, filed January 25, 2021, ¶¶ 4 and 9.
[2] Missouri Propane Gas Association's Reply to Spire Missouri Inc.'s Response to the Missouri Propane Gas Association's Application to Intervene Out of Time, filed February 8, 2021, ¶ 6.

THE COMMISSION ORDERS THAT:

1. The application to intervene of MPGA is denied.

2. This order shall be effective February 20, 2021.

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 Missouri-American Water Company for Certificates of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain Sewer Systems in and around the City of Trimble, Missouri	))))))	**File No. SA-2021-0074**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§4. Jurisdiction and powers generally

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

SEWER

§2. 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 and internet audio conference on the 24th day of February, 2021.

In the Matter of Missouri-American Water Company for Certificates of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain Sewer Systems in and around the City of Trimble, Missouri	))))))	**File No. SA-2021-0074**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: February 24, 2021 Effective Date: March 26, 2021

On September 17, 2020,[1] Missouri-American Water Company (MAWC) filed an application requesting a Certificate of Convenience and Necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Trimble, Missouri. MAWC also requested a waiver of the 60-day notice requirement of 20 CSR 4240-4.017(1).

On September 18, the Commission issued its Order Directing Notice, Setting Intervention Date, and Directing Staff to File a Recommendation. No applications to intervene were filed. The Commission's Staff (Staff) filed a Recommendation on December 3, advising that MAWC's application be approved subject to certain conditions. On December 14, MAWC filed its Response to Staff Recommendation. MAWC stated it had no objection to Staff's conditions and recommended actions.

[1] All date references hereafter will be to 2020, unless otherwise indicated. Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

FINDINGS

MAWC is a Missouri corporation, active and in good standing with the Missouri Secretary of State, with its principal office and place of business in St. Louis, Missouri. MAWC is a "sewer corporation," water corporation, and "public utility" as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction and supervision of the Commission.[2] MAWC provides sewer service to approximately 15,000 customers in Callaway, Jefferson, Pettis, Cole, Morgan, Platte, Taney, Stone, Christian, St. Louis, Clinton, Clay, Ray, and Warren Counties, Missouri. MAWC also provides water service to the public in and around the cities of St. Joseph, Joplin, Brunswick, Mexico, Warrensburg, Parkville, Riverside, Jefferson City; parts of Cole, St. Charles, Warren, Jefferson, Morgan, Pettis, Benton, Barry, Stone, Greene, Taney, Christian, Clay, Ray, and Platte Counties; and most of St. Louis County, Missouri. MAWC currently provides water service to approximately 470,000 customers.

The affected assets are in the City of Trimble (Trimble), Clinton County, Missouri. MAWC and Trimble have entered into a Purchase Agreement (Trimble Agreement) providing for MAWC's purchase of all the sewer utility assets of Trimble. To provide service to the area sought to be certificated, MAWC will also purchase Centennial Acres' sewer system. Centennial Acres is a residential development of single family lots located near Trimble, Missouri. The sewer system serves approximately 13 homes and has the ability to serve additional undeveloped lots. On August 19, MAWC entered into an Agreement for Purchase of Wastewater System (Centennial Agreement) with Centennial

[2] Section 386.020 (49), (59) and (43), RSMo.

Acres Association, Inc. (Centennial Acres) providing for MAWC's purchase of all the sewer system assets of Centennial Acres.

Description of Assets

At present Trimble owns and operates a sewer collection system which consists of approximately 24,200 linear feet of gravity sewer line, five lift stations, and a three-cell treatment lagoon, and serves approximately 280 accounts (primarily residential). The sewer system operates under a Missouri Department of Natural Resources (DNR) permit. The City is currently subject to DNR regulations, and the system is generally in good condition, with upgrades to modernize controls for four of the five lift stations as suggested by both MAWC and Staff. As with many aging sewer collection systems, there are inflow and infiltration issues that result in increased flows during significant rain events. Efforts to identify and repair these issues are ongoing. The system has adequate capacity for additional customers.

At present, Centennial Acres owns and operates a residential development comprised of single-family lots. Currently, Centennial Acres provides service to 13 homes, and the system has capacity for construction of up to 10 more homes/connections. The subdivision encompasses 37 acres.

Rates

The Trimble customers currently pay the following for sewer service:

- $32.00 for the first 1,000 gallons of water used
- $5.00 for the next 3,000 gallons of water used
- $5.00 for each 1,000 gallons (or part thereof) over 4000 gallons used

For Trimble customers, MAWC has proposed to provide residential service and rates pursuant to MO PSC No. 26, Sheet No. RT 3.1, applicable to certain named service

areas. The monthly flat rate for sewer service would be $38.75 for a single-family residence, according to tariffed rates. For Centennial Acres customers, MAWC proposed to maintain the current Centennial Acres customers' sewer rates of $75 per month. Staff saw no justification for treating these customers differently, who live in close proximity to the Trimble customers and for whom there was no significant difference in the cost of service. Staff recommended that the customers currently being provided service in Centennial Acres should be charged MAWC's currently effective tariff rate from MO PSC No. 26, Sheet No. RT 3.1. The monthly flat rate for sewer service would be $38.75 for a single-family residence, according to tariffed rates, if MAWC is granted a CCN.

Service Area

In its Application, MAWC requested a service area for Trimble that was limited to the city limits of Trimble. Staff and MAWC worked together to develop a proposed service area that was expanded from that requested in the application. The proposed expanded service area map is shown in Attachment A to Staff's Recommendation, and the modified written description is shown in Attachment B of Staff's Recommendation. Staff recommends that this proposed service area be approved, and that this service area be depicted in MAWC's tariff. Because the newly proposed service area is larger than that originally proposed, on January 15, 2021, the Commission issued a First Amended Order Directing Notice and Setting Deadline for Intervention. It contained Attachments A and B and ordered that they be provided to members of the media and General Assembly representing Clinton County, Missouri; the county commission of Clinton County, Missouri; and the Missouri Department of Natural Resources. It set January 29, 2021, as a deadline for intervention. No requests to intervene or other pleadings were filed.

Certificate of Convenience and Necessity

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

The Trimble assets and system in question currently serve about 280 sewer accounts, and the Centennial Acres assets and system serve 13 customers. There is a need for the service. Tartan criterion one is satisfied. That MAWC is qualified is established in that MAWC is an existing water and sewer corporation currently providing water service to approximately 470,000 customers and sewer service to more than 15,000 customers in several service areas throughout Missouri. Tartan criterion two is satisfied. MAWC anticipates no external financing and has demonstrated over many years that it has adequate resources to operate utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems,

[3] Section 393.170.3, RSMo.

[4]The factors have been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Ord, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.SW.C.).

to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when such situations arise. Tartan criterion three is satisfied. MAWC's acquisition of these systems allows for economies of scale with future plant investments, spreading fixed costs over a larger customer base, future development opportunities within the requested certificated areas and the potential for expanded certificated area requests in the future. MAWC's feasibility study indicates that the purchase of the City of Trimble's sewer assets will generate positive income, but that the Centennial Acres sewer purchase will generate negative income, with a net positive income between the two systems. Tartan criterion four is satisfied. Positive findings with respect to the first four Tartan factors supports a finding that granting a CCN will promote the public interest.[5]

Based upon the information provided in the Application and in the verified Recommendation of Staff, the Commission finds the operation of the sewer system now serving Trimble and Centennial Acre's customers described in this order is either "necessary or convenient for the public service."[6] The Commission finds, however, that the applicant's proposal that Centennial Acres customers continue to pay MAWC their current sewer rate of $75 per month should not be approved and that the customers currently being provided service in Centennial Acres should be charged MAWC's currently effective tariff rate from MO PSC No. 26, Sheet No. RT 3.1. The monthly flat

[5] File GA-94-127 (EFIS ga94127xxxxx), *In the Matter of the Application of Tartan Energy Company, LC, d/b/a Southern Missouri Gas Company for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage, and Maintain Gas Facilities and to Render Gas Service in and to Residents of Certain Areas of Wright, Texas, Howell, Webster, Greene and Douglas Counties, Including the Incorporated Municipalities of Seymour, Cabool, Houston, Licking, Mt. Grove, Mt. View, W Plains*

[6] Section 393.170.3, RSMo.

rate for sewer service will be $38.75 for a single-family resident, according to MAWC's tariffed rates.

DECISION

The Commission finds that granting MAWC a CCN is necessary or convenient for the public service and will grant MAWC a CCN to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Trimble, Missouri, for the service area described in Attachments A and B attached to Staff's Recommendation, subject to the Commission Staff's recommended conditions. The Commission will grant the Application and Motion for Waiver. The Commission, however, will deny MAWC's request for authority to continue to charge the Centennial Acres customers their current sewer rate of $75 per month and will order MAWC to charge those customers MAWC's currently effective tariff flat monthly rate from MO PSC No. 26, Sheet No. RT 3.1 of $38.75 for a single-family resident.

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

The Commission further finds based on MAWC's sworn application that MAWC has had no communications with the Commission within 150 days prior to its application regarding any substantive issue likely to be in the case. Good cause, accordingly, exists for granting a waiver of the 60-day notice requirement of Rule 20 CSR 4240-4.017(1)(D).

THE COMMISSION ORDERS THAT:

1. MAWC is granted a waiver of the sixty-day notice requirement provided for in Commission Rule 20 CSR 4240-4.017(1).

2. The Application and Motion for Waiver is granted subject to the conditions set out in this order, except that that part of MAWC's application proposing Centennial Acres' customers continue to pay MAWC their current sewer rate of $75 per month is not approved. Those customers shall be charged MAWC's currently effective flat rate of $38.75 per month for a single-family resident established in MO PSC No. 26, Sheet No. RT 3.1. MAWC's adoption of sewer rates pursuant to MAWC's current sewer tariff MO PSC No. 26 for both the City of Trimble and Centennial Acres is approved.

3. MAWC is granted a CCN to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Trimble, Missouri, for the service area described in Attachments A and B attached to Staff's Recommendation, subject to the following Commission Staff's recommended conditions:

a. MAWC shall submit newly created and/or revised tariff sheets, to become effective before closing on the assets, that include:

   i. Index (Sheet No. IN 1.1)
   ii. Index (Sheet No. IN 1.3)
   iii. Index (Sheet No. IN 1.4)
   iv. Index (Sheet No. IN 1.5)
   v. Rules (Sheet No. 13.4)
   vi. Sewer rates (Sheet No. RT 3.1)
   vii. Sewer charges (Sheet No. SC 1.1)
   viii. Service area map (Sheet No. MP 18.1)
   ix. Service area written description (Sheet No. CA 17.1)

b. MAWC shall notify the Commission of closing on the assets within five days after such closing.

c. If closing on the sewer system assets does not take place within thirty (30) days following the effective date of this order, MAWC 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 MAWC determines that the transfer of the assets will not occur.

d. If MAWC determines that a transfer of the assets will not occur, MAWC 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 MAWC shall submit tariff sheets as appropriate and necessary that will cancel service area maps, descriptions, rates and rules applicable to the Trimble and Centennial Acres service areas in its sewer tariff.

e. MAWC shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts.

f. MAWC shall adopt for the Trimble and Centennial Acres sewer assets the depreciation rates ordered for MAWC in Case No. WR-2017-0285.

g. MAWC shall obtain from Trimble and Centennial Acres 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.

h. MAWC shall provide training to its call center personnel regarding rates and rules applicable to Trimble and Centennial Acres customers.

i. MAWC shall include the Trimble and Centennial Acres 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.

j. MAWC shall distribute to the Trimble and Centennial 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.

k. MAWC shall provide to the CXD Staff an example of its actual communication with the Trimble and Centennial customers regarding its acquisition and operations of the sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;

l. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days after closing on the assets; and,

m. MAWC 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.

4. MAWC is authorized to do and perform, or cause to be done and performed, all such acts and things, as well as make, execute and deliver any and all documents as

may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

5. This order shall become effective on March 26, 2021.

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 Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain A Water System in an area of Stone County, Missouri (Table Rock Estates Subdivision)	)))))))	**File No. WA-2021-0116**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§4. Jurisdiction and powers generally

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

WATER

§2. 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 and internet audio conference on the 24th day of February, 2021.

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain A Water System in an area of Stone County, Missouri (Table Rock Estates Subdivision)	)))))))	**File No.: WA-2021-0116**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: February 24, 2021 Effective Date: March 26, 2021

On October 22, 2020, the Missouri-American Water Company (MAWC or Company) filed its Application and Motion for Waiver (Application). The Company applied for a Certificate of Convenience and Necessity (CCN) authorizing it to install, own, acquire, construct, operate, control, manage, and maintain a water system in an area of Stone County, Missouri (Table Rock Estate Subdivision, hereinafter Table Rock). MAWC also requested a waiver of the 60-day notice requirement under 20 CSR 4240-4.017. On October 23, 2020, the Commission issued its Order Directing Notice, Setting Date for Intervention, and Ordering Staff Recommendation. The Commission's Staff ("Staff") filed its Recommendation on February 4, 2021, recommending approval of the Application with conditions. No other responses were received. On February 5, 2021, the Commission issued its order requiring Staff and MAWC to file a map and legal description for the territory for which MAWC seeks a CCN. MAWC complied on February 9, 2021.

MAWC is a corporation in "good standing" status with the Missouri Secretary of State. It is an existing regulated water and sewer utility currently providing water service to more than 457,000 customers and sewer service to more than 13,000 customers in several areas throughout Missouri. The Table Rock subdivision is in Stone County, Missouri. Table Rock's water service is not regulated by the Commission and is provided by the Table Rock Homeowners Association. MAWC has proposed to acquire and operate Table Rock's water utility assets. The Table Rock Homeowners Association no longer has the ability or desire to operate the water utility. In a special meeting on May 4, 2019, 56 of 58 lot owners voted to approve the sale of the Table Rock utility assets to MAWC, with two lot owners absent who did not provide proxies.

The Table Rock system is unmetered, and 39 customers are billed annually by Table Rock for water in the amount of $240.00, plus $7.00 for the Missouri Department of Natural Resources' primacy fee, for a total of $247.00 per year. MAWC's application proposed to apply its existing approved rate for "[a]ll Missouri Service Areas Outside of St. Louis County and Outside of Mexico," to the Table Rock service area. The Staff determined this would result in a monthly flat rate charge of $48.40, increasing the current monthly rate of $20.58 by approximately 135%. Staff recommended against MAWC's proposed rate because MAWC had provided no cost of service justification for the increase. Staff recommended that Table Rock's current charges be continued until examined in a future rate case. MAWC has filed no response to Staff's 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."[1] 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. These criteria are known as the *Tartan* Factors.[2]

Based upon MAWC's verified application and Staff's recommendation, the Commission finds that MAWC's application satisfies the Tartan factors. There is a need for the service because the Table Rock customers are already receiving service and will continue to require service. Tartan criterion one is satisfied. Based upon its current provision of water and sewer service and its investment in its current operations, MAWC has demonstrated it is a qualified utility and has the financial ability to operate the Table Rock system. Tartan criterion two and three are satisfied. Based upon Staff's observations of the water system, needed improvements, and the analysis of Staff's Engineering Analysis Department; and Staff's review of the proposed purchase price and of MAWC's confidential feasibility study; the Commission finds it is feasible for MAWC to operate and manage Table Rock's water system. Tartan criterion four is satisfied. Because MAWC satisfies the first four Tartan factors, the Commission finds the proposed acquisition promotes the public interest and that Tartan criterion five is satisfied.

[1] Section 393.170.3, RSMo (2016)
[2] *In re Tartan Energy Co.,* 3 Mo. P.S.C. 173, 177 (1994).

No party has objected to the issuance of a CCN, nor has any party objected to Staff's recommended conditions or requested a hearing.[3] The Commission will grant MAWC a CCN for the service area depicted in the map and legal description filed on February 9, 2020, subject to Staff's recommended conditions. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area in any later proceeding. The Commission will grant MAWC's request for a waiver of the 60-day notice requirement under 20 CSR 4240-4.017. The Commission finds good cause exists for waiver based on MAWC's verified declaration that it has had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before MAWC filed its application.

THE COMMISSION ORDERS THAT:

1. MAWC's request for a waiver of the 60-day notice requirement under 20 CSR 4240-4.017 is granted.

2. MAWC is granted a Certificate of Convenience and Necessity authorizing it to install, own, acquire, construct, operate, control, manage, and maintain a water system in the Table Rock Estate Subdivision in Stone County, Missouri, as depicted and described in the map and legal description which MAWC filed in EFIS on February 9, 2021, and subject to the following conditions, which MAWC shall comply with:

[3] Commission Rule 20 CSR 4240-2.080(13) allows parties 10 days to respond to pleadings unless otherwise ordered by the Commission. 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).

a. MAWC shall install a customer's meter for each customer within the Table Rock service area within three years of closing on the assets;

b. MAWC shall charge a monthly rate of $20.58, which is one-twelfth the current annual rate for Table Rock customers, until the cost of service is examined in a future rate case;

c. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map and service area written description, to be included in its EFIS water tariff P.S.C. MO No. 13, and water rates, applicable specifically to water service in its Table Rock service area;

d. MAWC shall notify the Commission of closing on the assets within five days after such closing;

e. If closing on the water system assets does not occur within thirty days following the effective date of the Commission's order approving such, MAWC 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 MAWC determines that the transfer of the assets will not occur;

f. If MAWC determines that a sale of the assets will not occur, MAWC 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 require MAWC to submit tariff sheets, as appropriate, in its water tariff that would cancel service area maps and descriptions and rate sheets applicable to customers in the Table Rock area;

g. MAWC shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts; MAWC shall do such record keeping with respect to the Table Rock water system;

h. MAWC shall adopt, for Table Rock Water assets the depreciation rates ordered for MAWC in Case No. WR-2017-0285;[4]

i. MAWC shall obtain from Table Rock, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution–in-aid-of construction transactions, and any capital recovery transactions;

j. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Table Rock water system customers;

k. MAWC shall include the Table Rock water system 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;

l. MAWC shall distribute to the Table Rock water system customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the

[4] On February 9, 2021, the Commission Staff filed a correction to its February 4 Staff Recommendation, which had incorrectly identified the file as Case No. WR-2017-0301. Per Staff's pleading, the correct file number is WR-2017-0285.

requirements of Commission Rule 20 CSR 4240-13, within thirty (30) days of closing on the assets;

m. MAWC shall provide to the CXD Staff an example of its actual communication with the Table Rock water system customers regarding its acquisition and operations of the water system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;

n. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days after closing on the assets;

o. MAWC 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; and

p. MAWC shall file notice in this case once Staff Recommendations Nos. a through p above have been completed.

3. MAWC's request for leave to charge a rate of $48.40 per month to provide water service for the Table Rock area is denied. MAWC shall continue to charge Table Rock customers $20.58 per month, which is one-twelfth of the current charge of $247.00 per year, until that rate is reviewed in a future general rate case.

4. Prior to closing on the Table Rock assets, MAWC shall file tariff sheets within its existing P.S.C. MO No. 13 tariff showing the Table Rock service area map and written description, and stating a rate for water service for the Table Rock service area which is the same as Table Rock's existing rate, computed on a monthly basis.

5. This order shall be effective on March 26, 2021.

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

Patricia Sue Stinnett,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2020-0088**
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent	)	

REPORT AND ORDER

ELECTRIC

§14. Rules and regulations

§41. Billing practices

Commission Rule 20 CSR 4240-13.025(1)(A) limits the time period that Evergy West can make adjustments for a billing error to 60 consecutive monthly billing periods (five years) from the earliest date of Evergy West's discovery, inquiry, or actual notification of the billing error. The Commission determined that Complainant demonstrated ten years of overbilling, but because of the Commission's rule she was only entitled to five years reimbursement for the overbilling. Evergy West had already refunded Complainant for five years of overbilling. The Commission denied Complainant's complaint and directed Evergy West to investigate whether Complainant was overcharged for a second pole light, and to credit her account accordingly.

§41. Billing practices

Complainant alleged that Evergy West (known as KCP&L Greater Missouri Operations Company at the time the complaint was filed) incorrectly charged her over ten years for a utility light pole that was destroyed in a fire in April of 2009.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Patricia Sue Stinnett,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2020-0088**
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent	)	

REPORT AND ORDER

Issue Date: March 3, 2021

Effective Date: April 2, 2021

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Patricia Sue Stinnett,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2020-0088**
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent	)	

APPEARANCES

Appearing for Patricia Sue Stinnett:

Patricia Sue Stinnett, 20962 State Hwy 19, Eminence, MO 65466

Appearing for Kansas City Power and Light Company (Evergy Missouri Metro):

Roger W. Steiner, Corporate Counsel, 1200 Main Street, Kansas City, MO 64105

Appearing for the Staff of the Missouri Public Service Commission:

Casi Aslin, Associate Counsel, Governor Office Building, 200 Madison Street, Suite 800, Jefferson City, MO 65102

Senior Regulatory Law Judge: John T. Clark

REPORT AND ORDER

Complaint and Procedural History

On September 30, 2019, Patricia Sue Stinnett, Complainant, filed a formal complaint with the Missouri Public Service Commission against KCP&L Greater Missouri Operations Company (Evergy West).[1] Patricia Stinnett's complaint alleged an amount in controversy, but indicated that amount had not yet been ascertained. Thus, this complaint was not treated as a small formal complaint under Commission Rule 20 CSR 4240-2.070(15). Patricia Stinnett's complaint alleges that Evergy West has incorrectly charged her over a ten-year period for a utility light pole that fire destroyed on April 20, 2009. Evergy West reimbursed Patricia Stinnett for five years of billing charges for the destroyed light pole. Patricia Stinnett requests the Commission order Evergy West to reimburse her for all ten years of billing charges plus interest for the time period she and her husband were overcharged.

On October 1, 2019, the Commission ordered Evergy West to answer the complaint. Evergy West timely filed an answer and requested that the Commission dismiss Patricia Stinnett's complaint for failure to state a claim. The Commission also ordered its Staff (Staff) to investigate and file a report regarding the complaint. Staff filed a report on November 14, 2019, which concluded Evergy West had not violated any applicable statutes or Commission Rules associated with the subject matter of the complaint.

[1] Respondent company was known as KCP&L Greater Missouri Operations Company, but the current name of the company is Evergy Missouri West.

On January 16, 2020, Staff submitted an issue for determination on behalf of the parties. The single issue for the Commission's determination was whether Evergy West took any actions that constitute a violation of any law, regulation, Commission order, or Evergy Missouri West's tariff.

The Commission held an evidentiary hearing at the Commission's offices in room 310 of the Governor Office Building, Jefferson City, Missouri, on Tuesday, October 13, 2020.[2] At the hearing, Patricia Stinnett agreed that neither her information nor her husband's would be confidential as related to this proceeding. Accordingly, this Report and Order includes information that would otherwise be confidential customer information.[3] At the hearing, the Commission admitted the testimony of three witnesses and received 10 exhibits into evidence. Witnesses Alisha Duarte, Senior Customer Affairs Advisor, testified for Evergy West, and Tammy Huber, Senior Research Data Analyst, testified for the Commission's Staff. Patricia Stinnett testified on her own behalf. Staff's report was admitted into the record at the hearing.[4] Evergy submitted no exhibits. Patricia Stinnett produced nine exhibits at the hearing that had not previously been provided to the other parties. Those exhibits were not admitted into evidence at the hearing. The parties were given until October 23, 2020, to object to those exhibits, and no objections were received. Therefore, the Commission admits Patricia Stinnett's exhibits 1-9 into evidence. Evergy West agreed to submit any existing contractual services agreement as an exhibit at the Judge's request. On October 19, 2020, Evergy West filed a statement

[2] At the hearing, the Regulatory Judge and Complainant, Patricia Stinnett, appeared in person, and the other parties appeared via WebEx videoconference.
[3] Commission 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.
[4] Exhibit 201.

that it had searched its records and was unable to locate a lighting contract executed by Patricia Stinnett or her husband. The Commission took administrative notice of the company's tariff sheet PSC No. 1 Original Sheet R-33.1.

Patricia Stinnett also alleged that Evergy West did not apply a $125.00 credit. This allegation was not included in Patricia Stinnett's original complaint and only arose at the evidentiary hearing.

Evergy West, Staff, and Patricia Stinnett submitted post hearing briefs on December 1, 2020.

Findings of Fact

1. Patricia Stinnett and her husband Danny Stinnett were married April 1, 2006.[5]

2. Danny Stinnett and Patricia Stinnett did not reside together.[6] Patricia Stinnett resided in Mound City, and Danny Stinnett resided on a property in Maitland Missouri.[7]

3. The Maitland property contained a residence and a light pole.[8]

4. Evergy West provided service to the property and the light pole.[9]

5. On April 20, 2009, a house fire destroyed the residence on the property and the light pole. Evergy West was contacted to disconnect the power to the pole light because the pole was destroyed and the power line was on the ground. [10]

[5] Exhibit 3, confidential, Marriage Certification.
[6] Transcript, page 30
[7] Exhibit 8, confidential, electric bills.
[8] Transcript, page 28, and Exhibit 6, confidential, newspaper article.
[9] Exhibit 8, confidential, electric bills.
[10] Transcript, page 28, and exhibit 6, confidential, newspaper article.

6. Neither Patricia Stinnett nor her husband contacted Evergy West to inform the company that the light pole had burned down. Both of their cell phones were in the house that burned. Patricia Stinnett does not know who contacted Evergy West concerning the burned pole light and downed power line.[11]

7. A neighbor of Danny Stinnett, who worked for Evergy West and lived approximately one mile away, came to the property and turned off the main power to the property and light pole.[12]

8. Evergy West first became aware that the pole light was destroyed by fire on April 21, 2009.[13]

9. After the fire, Patricia Stinnett and her husband had a new light pole replaced within a week to provide light for their dogs.[14] Evergy West hung a power line across the highway to the new pole.[15]

10. Danny Stinnett did not notice that his electric bill contained charges for two light poles.[16]

11. Danny Stinnett's account was turned back on after the fire on June 1, 2009.[17]

12. Danny Stinnett died on April 6, 2019.[18]

13. After Danny Stinnett died, Patricia Stinnett learned that she was a co-applicant on the electric account for the property with the light pole. Patricia Stinnett

[11] Transcript, page 38.
[12] Transcript, page 38.
[13] Transcript, page 69.
[14] Transcript, page 28.
[15] Transcript, page 30.
[16] Transcript, page 30.
[17] Transcript, page 69.
[18] Exhibit 4, confidential, Certification of Death.

took over the electric bill for the property and discovered that the bill contained charges for two light poles.[19]

14. Danny Stinnett's bills contained two separate charges for lights. One charge was for a 14,400 Lumen High Pressure Sodium 150 watt light, and the other charge was for a 7,650 lumen Mercury Vapor 175 watt light.[20] The pole lights were not individually metered, but were billed a fixed charge per light.[21]

15. Patricia Stinnett never saw any of Danny Stinnett's electric bills for the property until she took over the account.[22]

16. Patricia Stinnett also discovered a $125 credit on Danny Stinnett's April 10, 2019, electric bill, which she alleges was not carried over.[23] That $125 credit was applied on future electric bills.[24]

17. On June 26, 2019, Patricia Stinnett contacted Evergy West to inform them that Danny Stinnett had died.[25] Evergy West made Patricia Stinnett the primary account holder that day.[26]

18. Prior to that June 26, 2019, contact, Evergy West was unaware of the billing issue with the area lights.[27]

19. Patricia Stinnett spoke to the same customer service representative from Evergy West on three separate occasions via telephone regarding the second light pole. That customer service representative told her that there were in fact two light poles on

[19] Transcript, pages 28 and 50.
[20] Exhibit 8, confidential, electric bills
[21] Transcript, page 70.
[22] Transcript, page 35.
[23] Transcript, pages 29 and 66.
[24] Transcript, page 68.
[25] Transcript, page 49.
[26] Transcript, page 69.
[27] Transcript, page 49.

the property. Upon informing the customer service representative that the second pole she was being billed for was destroyed in a fire, the representative told her that Evergy West would check to see that there was no second light pole.[28]

20. The work order to verify the second area light on the Maitland property was not processed immediately after Patricia Stinnett contacted Evergy West on June 26, 2019.[29]

21. On August 6, 2019, Patricia Stinnett contacted the Commission's Consumer Services Department to file an informal complaint.[30]

22. Evergy West eventually completed a field investigation of the Maitland property and confirmed that there was only one light pole.[31] Evergy West did not conduct its field investigation until after it had received the August 6, 2019, informal complaint from the Commission.[32]

23. In October 2019 Patricia Stinnett received a check from Evergy West.[33]

24. Evergy West refunded Patricia Stinnett for five years (60 billing periods) of charges, prior to June 26, 2019, for the second pole light.[34]

25. Both pole lights are billed on Patricia Stinnett's electric bill for service from July 10, 2019 through August 11, 2019.[35]

Conclusions of Law

A. Evergy West is a public utility as defined by Section 386.020(43), RSMo.

[28] Transcript, pages 32 and 39.
[29] Exhibit 201, confidential, Staff's report.
[30] Exhibit 201, confidential, Staff's report.
[31] Transcript, page 49.
[32] Exhibit 201, confidential, Staff's report.
[33] Transcript, page 29, and Exhibit 7, confidential, check
[34] Transcript, pages 49 and 51.
[35] Exhibit 8, confidential, electric bills.

Also, Evergy West is an electrical corporation as defined by Section 386.020(15), RSMo. Therefore, Evergy West is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Under Section 386.390 RSMo a person may file a complaint against a regulated utility setting forth any act or thing done or omitted to be done by any public utility in violation of any provision of law subject to the commission's authority, any rule promulgated by the commission, any utility tariff, or any order or decision of the Commission. Therefore, the Commission has authority over this complaint.

C. Evergy West's applicable tariff PSC Mo. No. 1, Original Sheet No R-33.1 addresses billing adjustments:

> 5.04 Billing Adjustments
>
> A. For all billing errors, Company will determine from all related and available information the probable period during which this condition existed and shall make billing adjustments for the estimated period involved as follows:
>
> (1) Residential Customers.
>
> (a) In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive billing periods, calculated from the date of discovery, inquiry, or actual notification of Company, whichever was first.
>
> (b) In the event of an undercharge, an adjustment shall be made for the entire period that the undercharge can be shown to have existed not to exceed twelve (12) consecutive billing periods, calculated from the date of discovery, inquiry, or actual notification of Company, whichever was first.

D. Commission Rule 20 CSR 4240-13.025 concerning billing adjustments provides:

> (1) For all billing errors, the utility will determine from all related and available information the probable period during which the condition causing the errors existed and shall make billing adjustments for that period as follows:
>
> (A) In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive monthly billing periods, or twenty (20) consecutive quarterly billing periods, calculated from the date of discovery, inquiry, or actual notification of the

utility, whichever comes first;

(B) In the event of an undercharge, an adjustment shall be made for the entire period that the undercharge can be shown to have existed not to exceed twelve (12) monthly billing periods or four (4) quarterly billing periods, calculated from the date of discovery, inquiry, or actual notification of the utility, whichever was first;

(C) In the event of an undercharge, the utility shall offer the customer the option to pay the adjusted bill over a period at least double the period covered by the adjusted bill;

E. The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with the Complainant.[36]

Decision

After applying the facts to its conclusions of law, the Commission has reached the following decision. The sole issue before the Commission as framed by the parties is whether Evergy West took any actions that constitute a violation of any law, regulation, Commission order, or Evergy Missouri West's tariff. Patricia Stinnett's complaint alleges that Evergy West violated Commission Rule 20 CSR 4240-13.025,[37] because Evergy West continued to charge her and her husband for a pole light that Evergy West was informed was destroyed by fire. Her requested relief for this alleged violation is that she wants the Commission to order Evergy West to reimburse her for all ten years of billing charges and interest.

Commission Rule 20 CSR 4240-13.025, which Patricia Stinnett says Evergy West violated, provides that for all billing errors, the utility will determine from all related and available information the probable period during which the condition causing the errors

[36] In cases where a "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions,"..."the burden of proof at hearing rests with the complainant." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

[37] Previously 4 CSR 240-13.025.

existed and shall make billing adjustments for that period. There is no dispute that the pole light that is the subject of the billing error was destroyed on April 20, 2009. Evergy West was aware of the pole lights destruction on April 21, 2009, and Danny Stinnett's account was reactivated after the fire on June 1, 2009. Both Evergy West and Patricia Stinnett agree that she and her husband were charged for the pole light for approximately ten years after its destruction. However, Commission Rule 20 CSR 4240-13.025(1)(A) limits the time period that Evergy West can make adjustments for the billing error to 60 consecutive monthly billing periods, five years, from the earliest date of Evergy West's discovery, inquiry, or actual notification of the billing error. The language of Commission Rule 20 CSR 4240-13.025 is also mirrored in Evergy West's tariff.

The first time the billing error was brought to Evergy West's attention was on June 26, 2019, when Patricia Stinnett contacted Evergy West. That means Evergy West may only make an adjustment for the overcharge for the previous 60 months.

Evergy West sent Patricia Stinnett a refund check for the 60 months the destroyed light pole was overcharged to her account from the date of discovery, June 26, 2019. Evergy West therefore complied with both the Commission's Rule and its tariff. The Rule and Evergy West's tariff both provide that adjustments are not to exceed 60 consecutive monthly billing periods. If Evergy West had refunded Patricia Stinnett for the full ten years of overbilling, it would have violated both the Commission's Rule as well as its tariff. This is both logical and fair. Danny Stinnett did not discover the billing error from the time his account was reactivated after the fire until his death. It is the customer's responsibility to review their bills for billing errors within a reasonable amount of time. Commission Rule 20 CSR 4240-13.025(1)(A) limits that time to five years from the date of discovery, inquiry,

or actual notification. However, because both pole lights were billed on Patricia Stinnett's electric bill for service from July 10, 2019 through August 11, 2019, it appears Evergy West may have overbilled Patricia Stinnett for an additional month beyond when it was first made aware of the overcharge.

Patricia Stinnett has the burden to show that Evergy West has violated a law, rule, or order of the Commission. Because she has not done so, her complaint fails and the Commission must deny her complaint.

The Commission is concerned that Patricia Stinnett contacted Evergy West on June 26, 2019, and informed the company that the light pole was destroyed, but Evergy West did not perform a field investigation to verify the poles destruction until after the company received the informal complaint in August 2019. In that time period, Patricia Stinnett contacted Evergy West several times to try and resolve the billing error. Staff's report recommends that Evergy West add a review process to Service Technician orders and notes. Staff further recommends Evergy West utilize this complaint as a coaching process for Service Technicians to properly identify the equipment being installed at a customer's property. Staff believes this this would better ensure that the personnel responsible for inputting the account notes accurately reflect the actions taken by the company. The Commission agrees with this recommendation, and will direct Evergy West to implement Staff's recommended changes.

THE COMMISSION ORDERS THAT:

1. Evergy West's motion to dismiss for failure to state a claim is denied.
2. Patricia Stinnett's complaint is denied.

3. Evergy West shall comply with Staff's recommendation to add a review process to Service Technician orders and notes.

4. Evergy West shall investigate whether Patricia Stinnett was overcharged for the second pole light after June 26, 2019, and credit her account accordingly.

5. This order shall become effective on April 2, 2021.

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 Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Under 20 CSR 4240-3.105	)))))	**File No. EA-2020-0371**

ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§13. Extension and changes

The Commission granted Union Electric Company d/b/a Ameren Missouri a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under Ameren Missouri's expanded Community Solar Pilot Program.

§21. Grant or refusal of certificate generally

The Commission granted Union Electric Company d/b/a Ameren Missouri a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under Ameren Missouri's expanded Community Solar Pilot Program.

§22. Restrictions and conditions

The Commission granted a certificate of public convenience and necessity to Union Electric Company d/b/a Ameren Missouri with conditions as set out in the approved agreement of the parties.

§42. Electric and power

The Commission granted Union Electric Company d/b/a Ameren Missouri a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under Ameren Missouri's expanded Community Solar Pilot Program.

§42. Electric and power

The Commission granted a certificate of public convenience and necessity to Union Electric Company d/b/a Ameren Missouri with conditions as set out in the approved agreement of the parties.

ELECTRIC

§3. Certificate of convenience and necessity

The Commission granted Union Electric Company d/b/a Ameren Missouri a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under Ameren Missouri's expanded Community Solar Pilot Program.

§3. Certificate of convenience and necessity

The Commission granted a certificate of public convenience and necessity to Union Electric Company d/b/a Ameren Missouri with conditions as set out in the approved agreement of the parties.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of March, 2021.

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Under 20 CSR 4240-3.105	)))))	**File No. EA-2020-0371**

ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: March 24, 2021 Effective Date: April 3, 2021

This case concerns the application of Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) requesting a certificate of convenience and necessity (CCN) under Subsection 393.170.1, RSMo (Supp. 2020). Ameren Missouri seeks a CCN authorizing it to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and all associated facilities in Montgomery County, Missouri, to serve as the second Program Resource for Ameren Missouri's Community Solar Pilot Program (Program). Ameren Missouri, the Staff of the Commission (Staff), the Office of the Public Counsel (Public Counsel), and Renew Missouri Advocates d/b/a Renew Missouri (Renew Missouri) (collectively referred to as "Signatories") filed a *Unanimous Stipulation and Agreement* on March 15, 2021, which resolves all the issues among the parties and requests the Commission grant Ameren Missouri a CCN with conditions.

The agreement represents that Sierra Club, the only party that did not sign the agreement, does not object to the agreement. Commission regulations allow non-

signatory parties seven days to object to a nonunanimous stipulation and agreement.[1] If no party timely objects, the Commission may treat the agreement as unanimous.[2] More than seven days have elapsed since the agreement was filed and no party objected. Thus, the Commission will treat the agreement as unanimous.

Background

In File No. EA-2016-0207, the Commission approved Ameren Missouri's Community Solar Pilot Program and associated tariff, and granted Ameren Missouri a CCN for its first Program Resource — the St. Louis Lambert International Airport solar generation facility. The Program launched in the fall of 2018, and was fully subscribed in 55 days. Construction of the Program's one-megawatt Lambert facility was completed in August 2019.

On November 25, 2019, Ameren Missouri filed an application and associated tariff to expand the Program.[3] On May 28, 2020, the Commission approved a unanimous stipulation and agreement that continued and modified certain provisions related to two previous agreements in File No. EA-2016-0207. The approved unanimous stipulation and agreement and tariff allowed Ameren Missouri to market the Program to customers so that Ameren Missouri could determine the need for future Program resources.

On October 28, 2020, Ameren Missouri filed the application for a CCN currently before the Commission. The tariff governing the Program requires that at least 90% of a resource be subscribed prior to commencing construction. Ameren Missouri explained that, as of October 19, 2020, over 93% of the proposed Montgomery County facility's

[1] 20 CSR 4240-2.115(2)(B).
[2] 20 CSR 4240-2.115(2)(C).
[3] File No. ET-2020-0022.

planned capacity was subscribed.[4] The Commission issued notice of the application and directed Staff to file a recommendation. On February 5, 2021, Staff filed its report finding that Ameren Missouri met the initial filing requirements for a CCN application, concluding that all five Tartan criteria are met,[5] and recommending approval of the application, subject to nine conditions. Subsequently, the parties had discussions and reached an agreement that the CCN for the Montgomery County facility should be granted with certain reasonable and necessary conditions.

Certificate of Convenience and Necessity

With regard to the application for a CCN, Ameren Missouri is an "electrical corporation" and a "public utility" as defined in Subsections 386.020(15) and (43), RSMo 2016. According to Subsections 393.170.1 and .2, RSMo (Supp. 2020), an electrical corporation may not construct electrical plant, with the exception of an energy generation unit of one megawatt or less, without first obtaining the permission and approval of this Commission. In granting a certificate, the Commission may give permission and approval when it has determined after due hearing[6] that the construction is "necessary or convenient for the public service."[7] The Commission may also impose such conditions as it deems reasonable and necessary upon its grant of permission and approval.[8]

[4] In paragraph 8 of the *Unanimous Stipulation and Agreement* filed on March 15, 2021, Ameren Missouri states that more than 100% of the Montgomery County Program Resource's capacity is subscribed.
[5] Referring to the criteria set out in *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994) ("Tartan").
[6] The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; 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).
[7] Section 393.170.3, RSMo 2016.
[8] Section 393.170.3, RSMo 2016.

Ameren Missouri requests authority to construct, own, operate, and maintain a solar generation facility for the continuation and expansion of its solar subscription pilot program. The parties to this proceeding have extensively negotiated the need for and the terms of this program and have agreed that the Commission should grant the CCN with certain conditions.

The Montgomery County facility will consist of approximately 6.16 megawatts of alternating current, single-axis, ground-mounted, tracking photovoltaic panels and associated facilities. The Montgomery County facility will be located on agricultural land currently owned by Ameren Missouri. Ameren Missouri has obtained a Conditional Use Permit from Montgomery County, Missouri. Ameren Missouri intends to apply for a land disturbance permit from the Missouri Department of Natural Resources just prior to the commencement of construction.

The Commission has commonly used five criteria as in determining whether construction and operation of a facility are necessary or convenient for the public service:

1. There must be a need for the service;
2. The applicant must be qualified to provide the proposed service;
3. The applicant must have the financial ability to provide the service;
4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.[9]

In its application, Ameren Missouri explained that the expansion of its pilot program will allow more of its customers to voluntarily subscribe to the program thereby supporting the development of solar facilities by Ameren Missouri. Ameren Missouri stated that this

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

program would further the company's commitment to renewable generation in the state of Missouri. Additionally, Ameren Missouri stated that the fact that the Program is already fully subscribed with some customers having been on a waitlist for over two years, demonstrates there is a need for the company to support the desire of its customers for energy supplied from renewable sources. Ameren Missouri supported these statements with the sworn testimony of Annemarie Nauert and Scott J. Wibbenmeyer attached to its application.

The application also demonstrates, and the Signatories have agreed that Ameren Missouri is qualified to construct, install, own, operate, maintain, and otherwise control and manage this solar project and it is financially able to provide this service. The signatory parties also agree the project is economically feasible and is in the public interest. The Commission concludes that granting the application for a CCN meets the above-listed criteria.

The Commission has reviewed the verified application and its attachments, the Staff report, and the agreement. The Commission finds that granting Ameren Missouri's application for a CCN would serve the public convenience and necessity. Therefore, the application will be granted.

Conditions

Staff's report and recommendation set out nine conditions including the conditions, with some modifications, that were placed on the original solar pilot program CCN in File No. EA-2016-0207. After further discussions with Ameren Missouri and the other parties, agreement was reached as to which conditions are reasonable and necessary to be applied to the Montgomery County facility.

The Signatories agreed that Staff's proposed conditions 1, 2, and 9 should be imposed without modification, Staff's proposed conditions 3, 4, 6, and 8 should be imposed with modifications, and no other conditions should be imposed. The Commission has considered the conditions set out in the *Unanimous Stipulation and Agreement* and finds that they are reasonable and necessary to the grant of the CCN.

Conclusion

The Commission approves the agreement and grants Ameren Missouri a CCN for the Montgomery County facility with the reasonable and necessary conditions as set out in the ordered paragraphs below.

Ameren Missouri has requested, and the agreement contemplates that the Commission will approve the certificate no later than April 1, 2021. No party has opposed the current application or agreement. Therefore, this order will be given a ten-day effective date.

THE COMMISSION ORDERS THAT:

1. The *Unanimous Stipulation and Agreement* filed on March 15, 2021, and attached hereto is approved. The attached stipulation and agreement is incorporated into this order as if set forth herein. The parties are ordered to comply with the provisions of the stipulation and agreement.

2. Ameren Missouri is granted a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under its expanded Community Solar Pilot Program as described in the *Unanimous Stipulation and Agreement*.

3. Ameren Missouri's certificate is granted with the following conditions:

a. Ameren Missouri shall contact the Missouri Department of Transportation (MODOT) and the Norfolk Southern Railway to inquire of any concerns with the Montgomery solar facility and, for MODOT, the additional issue of the possibility of glare and file documentation regarding the contact in this case file.

b. Ameren Missouri shall submit final plans and project specifications and the final operating and maintenance manual as they are available.

c. Staff and Ameren Missouri shall jointly file agreed upon in-service criteria for the Montgomery solar facility with the Commission within 90 days of granting the CCN. The filed in-service criteria will be used to evaluate whether the Community Solar facility, once operational, meets the fully operational and used for service standard in Section 393.135, RSMo.[10]

d. The conditions and recommendations agreed to in File Nos. EA-2016-0207 and ET-2020-0022 shall continue to apply to the new facility [Project], except as otherwise provided in this Stipulation.

e. Ameren Missouri shall track all revenues, investments, and expenses directly related to the Resource and any future Community solar resources and record them into separate accounts or subaccounts, to the extent practical, separately by facility starting with the in-service date for the facility. Ameren Missouri shall prepare, in support of future general rate cases, an analysis using reasonable allocation methods for those categories of expenses where it is not practical to specifically track the transactions in the general ledger.

f. The additional land at the Montgomery site shall remain in plant held for future use until a future use is identified for it.

g. The sharing mechanism described in paragraph 15 of the *Non-Unanimous Stipulation and Agreement* on pages 9-10 in File No. EA-2016-0207 will remain unchanged up to the confidential estimated total cost of the initial construction of the Project as set out in paragraph 24 of the Company's *CCN Application*.[11] If the actual costs of initial construction exceed the confidential estimated total cost of the initial construction of the Project as set out in paragraph 24 of the Company's *CCN Application*, customers will not share in any of the excess costs.

[10] Ameren Missouri anticipates that the Project's in-service criteria will be similar to the in-service criteria used for Ameren Missouri's past solar projects (the O'Fallon Renewable Energy Center and the Lambert Resource).
[11] Filed October 28, 2020.

4. Nothing in this order shall be considered a finding by the Commission of the reasonableness of the expenditures herein involved, nor of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the value placed on the property.

5. The Commission reserves the right to consider the ratemaking treatment to be afforded the expenditures and properties herein involved, and the resulting cost of capital, in any later proceeding.

6. This order shall be effective on April 3, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Deputy Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity	))))	**File No. EA-2020-0371**

UNANIMOUS STIPULATION AND AGREEMENT

Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), the Missouri Public Service Commission Staff ("Staff"), Renew Missouri Advocates d/b/a Renew Missouri and the Office of the Public Counsel (collectively the "Signatories"), present this *Stipulation and Agreement* ("Stipulation") to the Missouri Public Service Commission ("Commission") for its approval. Sierra Club has authorized the Signatories to indicate that it does not object to this Stipulation.

BACKGROUND

1. In File No. EA-2016-0207, the Commission approved Ameren Missouri's Community Solar Pilot Program (the "Program") and associated tariff, and granted Ameren Missouri a CCN for its first Program Resource — the St. Louis Lambert International Airport solar generation facility ("Lambert Resource"). The Program launched in the fall of 2018, and was fully subscribed in 55 days. Construction of the Program's one-megawatt Lambert Resource was completed in August 2019.

2. On November 25, 2019, Ameren Missouri filed an *Application for Approval to Expand Community Solar Pilot Program and Associated Tariff* seeking expansion of the Program, which was designated File No. ET-2020-0022.

3. On May 13, 2020, Ameren Missouri, the Commission's Staff, the Office of the Public Counsel, and Renew Missouri filed a *Unanimous Stipulation and Agreement*

("Agreement") agreeing to continuation of certain provisions related to the First and Second Stipulations filed in File No. EA-2016-0207 and modifying provisions to allow for marketing to customers so Ameren Missouri may determine need for future Pilot resources[1].

4. Via Order effective June 8, 2020, the Commission approved the Agreement and compliance tariff sheets now in effect.

5. Ameren Missouri immediately commenced active marketing of the Program expansion based on the agreement stipulated by signatories and approved by the Commission.

6. On October 28, 2020, Ameren Missouri filed an application for a Certificate of Convenience and Necessity (“CCN”) to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities ("*CCN Application*"), to become the second Resource under the Company's expanded Community Solar Pilot Program (“the Project”).

7. In paragraph 18 of the *CCN Application*, the Company explained that, as of October 19, 2020, over 93% of the Project's planned capacity was subscribed.

8. As of this filing, the Company represents over 100% of the Project planned capacity is subscribed.

[1] See par 8, Unanimous Stipulation and Agreement filed May 13, 2020.

9. On February 5, 2021, Staff filed its Report finding that Ameren Missouri met the initial filing requirements for the *Application*,[2] concluding that all five Tartan criteria are met,[3] and recommending approval of the *Application*, subject to nine conditions.[4]

10. Ameren Missouri requested, and was granted, a two-week extension of time to clarify Staff's recommended conditions and respond to them.

11. The Commission may "impose such condition or conditions as it may deem reasonable and necessary" on a CCN under Section 393.170(3), RSMo.

12. The Signatories have come to an agreement on the reasonable and necessary conditions for the Project CCN as set forth below.

SPECIFIC TERMS AND CONDITIONS

13. The Signatories agree Ameren Missouri should be granted the requested CCN subject to certain conditions. This agreement only applies to the Project, and not any future projects.

14. The Signatories agree that Staff's proposed conditions 1, 2, and 9 should be imposed without modifications.

> Staff Proposed Condition 1: The Commission order Ameren Missouri to contact MODOT and the Norfolk Southern Railway to inquire of any concerns with the Montgomery solar facility and, for MODOT, the additional issue of the possibility of glare and file documentation regarding the contact in this case file.
>
> Staff Proposed Condition 2: Ameren Missouri shall submit final plans and project specifications and the final operating and maintenance manual as they are available.
>
> Staff Proposed Condition 9: The Commission directs Staff and Ameren Missouri to jointly file agreed upon in-service criteria for the Montgomery solar facility with the Commission within 90 days of

[2] File No. EA-2020-0371, Staff Report, issued February 5, 2021, at p. 7.
[3] Id. at Section IV.
[4] Id. at pp. 1-2.

granting the CCN. The filed in-service criteria will be used to evaluate whether the Community Solar facility, once operational, meets the fully operational and used for service standard in Section 393.135, RSMo.[5]

15. The Signatories agree that modifications to Staff's proposed conditions 3, 4, 6, and 8 should be imposed as follows.

Staff Proposed Condition 3 as modified: The conditions and recommendations agreed to in Case Nos. EA-2016-0207 and ET-2020-0022 shall continue to apply to the new facility [Project], except as otherwise provided in this Stipulation.

Staff Proposed Condition 4 as modified: Ameren Missouri shall track all revenues, investments, and expenses directly related to the Resource and any future Community solar resources and record them into separate accounts or subaccounts, to the extent practical, separately by facility starting with the in-service date for the facility. Ameren Missouri shall prepare, in support of future general rate cases, an analysis using reasonable allocation methods for those categories of expenses where it is not practical to specifically track the transactions in the general ledger.

Staff Proposed Condition 6 as modified: The additional land at the Montgomery site shall remain in plant held for future use until a future use is identified for it.

Staff Proposed Condition 8 as modified: The sharing mechanism described in paragraph 15 of the Non-Unanimous Stipulation and Agreement on pages 9-10 in Case No. EA-2016-0207 will remain unchanged up to the confidential estimated total cost of the initial construction of the Project as set out in paragraph 24 of the Company's *CCN Application*. If the actual costs of initial construction exceed the confidential estimated total cost of the initial construction of the Project as set out in paragraph 24 of the Company's *CCN Application*, customers will not share in any of the excess costs.

16. The Signatories agree that no other conditions should be imposed on the

[5] Ameren Missouri anticipates that the Project's in-service criteria will be similar to the in-service criteria used for Ameren Missouri's past solar projects (the O'Fallon Renewable Energy Center and the Lambert Resource).

requested CCN[6]. However, Ameren Missouri has committed to propose a permanent, non-pilot Community Solar Program in the Company's upcoming electric general rate case, File No. ER-2021-0240, and the Signatories will not be bound to support the approval of, or any parameters or terms of, the permanent program. Any future program evaluation may include evaluation of the value of solar study the Company committed to provide with its next Integrated Resource Plan ("IRP") update.

17. In order to meet procurement and construction commencement deadlines, which in turn impact project costs, the Signatories request that the Commission issue any order approving this Stipulation and granting the requested CCN subject to the foregoing specified conditions on or before April 1, 2021.

GENERAL PROVISIONS

18. This Stipulation is being entered into for the purpose of disposing of the issues that are specifically addressed herein. In presenting this Stipulation, none of the Signatories shall be deemed to have approved, accepted, agreed, consented or acquiesced to any ratemaking principle or procedural principle, including, without limitation, any method of cost or revenue determination or cost allocation or revenue related methodology, and none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation (whether it is approved or not) in this or any other proceeding, other than a proceeding limited to enforce the terms of this Stipulation, except as otherwise expressly specified herein.

19. This Stipulation has resulted from extensive negotiations, and the terms

[6] Staff proposed Condition 5 is not modified by this Stipulation, and remains the same as in Case Nos. EA-2016-0207 and ET-2020-0022. Staff proposed Condition 7 is a statement, not a condition, and thus not addressed by this Stipulation.

hereof are interdependent. If the Commission does not unconditionally approve this Stipulation, or approves it with modifications or conditions to which a party objects, then this Stipulation is considered to be void and no Signatory will be bound by any of its provisions.

20. If the Commission does not unconditionally approve this Stipulation without modification, or approves it with modifications or conditions to which a party objects, and notwithstanding its provision that it shall become void, neither this Stipulation, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights any Signatory has for a decision in accordance with Section 536.080, RSMo. 2000, or Article V, Section 18, of the Missouri Constitution, and the Signatories retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

21. This Stipulation contains the entire agreement of the Signatories concerning the issues addressed herein and resolves all issues in this case.

22. This Stipulation does not constitute a contract with the Commission. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any

statutory right, including the right to access information, or any statutory obligation.

WHEREFORE, the Signatories respectfully request that the Commission approve this *Stipulation*, grant the requested CCN subject to the conditions set forth above, and grant any other and further relief as it deems just and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the service list of record of this case on this 15th day of March, 2021.

/s/Jermaine Grubbs
Jermaine Grubbs

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Claude Scott,	)	
	)	
Complainant	)	
	)	
v.	)	**File No. GC-2020-0201**
	)	
Spire Missouri, Inc., d/b/a Spire	)	
	)	
Respondent	)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§24. Procedures, evidence and proof

§25. Pleadings and exhibits

The Commission denied a request for additional documents submitted on December 1, 2020 as untimely when the established procedural schedule required requests for information to be submitted no later than June 22, 2020.

GAS

§2. Obligation of the utility

Where the complainant failed to show that a gas utility disconnected his gas service between November 1 through March 31, and failed to show that the gas utility disconnected his gas service on any day when the National Weather Service morning forecast predicts a temperature drop below 32 degrees Fahrenheit in the next 24-hour period, the Commission found that there was no violation of the Cold Weather Rule under Commission Rule 20 CSR 4240-13.050.

§2. Obligation of the utility

Where a customer service representative was required, and failed, to offer a form to a customer to help him demonstrate that he was experiencing a medical emergency, and where a supervisor subsequently arranged to send a medical emergency form by mail and electronic mail the same day, the Commission found that a lapse in offering the medical emergency form, when corrected the same day, did not support a finding that a violation of statute, Commission rule, or tariff had occurred.

SERVICE

§17. Duty to serve in general

Where the complainant failed to show that a gas utility disconnected his gas service between November 1 through March 31, and failed to show that the gas utility disconnected his gas service on any day when the National Weather Service morning forecast predicts a temperature drop below 32 degrees Fahrenheit in the next 24-hour period, the Commission found that there was no violation of the Cold Weather Rule under Commission Rule 20 CSR 4240-13.050.

§21. Duty to serve as affected by charter, franchise or ordinance

Where a service customer representative was required, and failed, to offer a form to a customer to help him demonstrate that he was experiencing a medical emergency, and where a supervisor subsequently arranged to send a medical emergency form by mail and electronic mail the same day, the Commission found that a lapse in offering the medical emergency form, when corrected the same day, did not support a finding that a violation of statute, Commission rule, or tariff had occurred.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Claude Scott,	)	
	)	
Complainant	)	
v.	)	**File No. GC-2020-0201**
	)	
Spire Missouri, Inc., d/b/a Spire	)	
	)	
Respondent	)	

REPORT AND ORDER

Issue Date: April 7, 2021

Effective Date: May 7, 2021

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Claude Scott,	)	
	)	
Complainant	)	
v.	)	**File No. GC-2020-0201**
	)	
Spire Missouri, Inc., d/b/a Spire	)	
	)	
Respondent	)	

APPEARANCES

Claude Scott, 3725 Geraldine Ave., St. Ann, Missouri 63074.

For the Staff of the Missouri Public Service Commission:

Travis Pringle, 200 Madison Street, Suite 800, Jefferson City, Missouri 65102.

For Spire Missouri, Inc.:

Goldie T. Bockstruck, Spire Missouri Inc., 700 Market Street, St. Louis, Missouri 63101.

Regulatory Law Judge: **Jana C. Jacobs**

REPORT AND ORDER

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

Procedural History

On January 16, 2020, Claude Scott filed a formal complaint against Spire Missouri, Inc. d/b/a Spire. Mr. Scott alleged Spire billed him based on inaccurate estimates and failed to read his meter, overbilled him, failed to credit his account for payments, failed to offer a payment plan and violated the Commission's "Cold Weather Rule."[1] Mr. Scott's complaint alleged an amount in dispute of $220.00.[2]

On January 17, 2020, the Commission directed notice of a contested case under Chapter 536 of the Revised Statutes of Missouri (RSMo) and directed Spire to satisfy the complaint or file an answer.[3] The Commission notified the parties this case constitutes a small formal complaint under Commission rules.[4] The Commission also directed the Staff of the Commission (Staff) to investigate the complaint and report its findings and recommendations to the Commission.

[1] Ex. 301: Complaint, p. 1-3 (complaint pages are not numbered; page numbers provided exclude exhibit cover page).
[2] Ex. 301: Complaint, p. 2.
[3] *Order Giving Notice of Contested Case and Directing Answer* (Jan. 17, 2020).
[4] Commission Rule 20 CSR 4240-2.070(15).

On February 3, 2020, Spire requested mediation of Mr. Scott's complaint, and on February 18, 2020, Mr. Scott agreed to mediation. After an attempt at mediation, Spire filed a timely answer on March 16, 2020, and denied Mr. Scott's allegations in full.

On April 20, 2020, Staff filed its report and recommendations, concluding that Spire had not violated applicable statutes, Commission rules or the company's tariff in relation to Mr. Scott's complaint. On April 21, 2020, the Commission issued a notice of extension of the 100-day deadline for resolution in a small formal complaint case, based on the finding that adequate time did not exist to conduct a hearing before the expiration of the time period.

The Commission conducted a prehearing conference on May 11, 2020, for the purpose of establishing a hearing date, discussing procedural issues and allowing the parties to meet to discuss a resolution of the complaint. At Spire's request, the Commission on May 20, 2020, extended the time allowed for the parties to file a proposed procedural schedule to permit Spire to change the meter at Mr. Scott's address at his request.[5]

On June 4, 2020, the parties filed a joint proposed procedural schedule. The Commission adopted the schedule and issued notice of a July 24, 2020 evidentiary hearing.[6] The procedural schedule established a June 22, 2020 deadline for "discovery," or requests by the parties to other parties for information in the case.[7] On July 23, 2020,

[5] *Order Extending Time to File Proposed Schedule* (May 20, 2020); *see also Spire Missouri's Status Report*, ¶¶ 2, 3 (May 20, 2020).
[6] The parties' proposed procedural schedule allowed for either an in-person hearing or a hearing by telephone, if required because of restrictions due to COVID-19. *Joint Proposed Procedural Schedule*, ¶¶ 5, 6 (June 4, 2020). The Commission's procedural orders required exchange of exhibits in advance of hearing to enable Mr. Scott to participate in a remote hearing with notice of all proposed exhibits. *See Order Providing for Exchange of Exhibits* (July 14, 2020); *Order on Procedural Schedule* (Nov. 12, 2020). *See also Notice of Proposed Exhibits and Order Directing Filing of Objections* (Dec. 10, 2020).
[7] *Notice of Hearing and Order Setting Procedural Schedule*, ¶ 1 (June 5, 2020).

the Commission continued the July 24 hearing based on Spire's request that the hearing be canceled to allow Spire to complete a second exchange of Mr. Scott's meter, at his request.[8] On September 21, 2020, Spire reported the parties continued to work toward resolution of the case.

On October 21, 2020, Spire reported the parties were not able to reach a resolution and requested the Commission schedule an evidentiary hearing on one of two dates proposed by Staff and Spire. After allowing Mr. Scott an opportunity to object to the proposed hearing dates, the Commission on November 12, 2020, issued notice of a December 4, 2020 evidentiary hearing.

On December 4, 2020, the Commission conducted an evidentiary hearing via telephone conference, also accessible by Webex video conference. During the hearing, the Commission heard argument from the parties regarding a pending filing submitted by Mr. Scott. On December 1, 2020, Mr. Scott filed a letter with an attached document labeled "Complainant's Motion for Discovery." The attached document sought "monthly billing" for the period of "04/2019 to 10/2020" and requested a response "prior to November 23, 2020."[9] After giving Mr. Scott the opportunity to explain his request, the presiding officer took the issue of Mr. Scott's discovery request under advisement to be resolved after the hearing.

During the evidentiary hearing, the Commission received 15 exhibits into evidence.[10] Two additional exhibits were discussed during the hearing, to be admitted pending an opportunity for objection after the hearing. The Commission heard testimony

[8] *Motion for Continuance*, ¶¶ 3, 4 (July 23, 2020).
[9] *See Letter Dated Nov. 25, 2020,* Attachment: *"Complainant's Motion for Discovery"* (Dec. 1, 2020).
[10] *Notice of Admitted and Filed Exhibits* (Jan. 22, 2021).

from five witnesses. Mr. Scott testified on his own behalf. Spire presented testimony from Connie Sanchez, a Spire outreach specialist; Brandon Wilken, a service technician; and James Rieske, Spire's Director of Measurement. Staff presented witness Tammy Huber, a senior research/data analyst with the Commission's Customer Experience Department. In addition, over Mr. Scott's objection, the Commission took official notice of Spire tariffs in effect as of the relevant time periods in this case.[11]

During the hearing, Mr. Scott testified he did not have a copy of a June 1, 2020 letter addressed to him by Spire.[12] Also during the hearing, based on the testimony of Ms. Sanchez, the presiding officer requested Spire file a copy of the August 5, 2019 billing statement for Mr. Scott's account.[13] On December 8, 2020, Spire filed the statement.[14]

On December 10, 2020, the Commission issued a *Notice of Proposed Exhibits and Order Directing Filing of Objections*. The notice attached the August 2019 statement and the June 2020 letter and directed that the notice and attached documents be mailed to Mr. Scott. As stated in the notice, objections to the proposed exhibits were due no later than December 31, 2020.

On December 17, 2020, the Commission issued an *Order Providing for Correction to Admitted and Filed Exhibits*. The order identified the exhibits admitted to the record during the hearing and indicated reserved exhibit numbers for the June 2020 letter (Ex. 103) and the August 2019 statement (Ex. 106), copies of which had already been

[11] Transcript Vol. 2 at p. 27-29 (Dec 4, 2020).
[12] Transcript Vol. 2 at p. 161-162 (Dec. 4, 2020). The June 1, 2020 letter was included in Spire's prehearing exhibit disclosure, which Spire filed on November 25, 2020, as required by the procedural order. *Response to Order Directing Filing in Advance of Hearing*, Attachment p. 10: June 2020 Letter (Nov. 25, 2020). The certificate of service included with Spire's November 25 filing indicates Spire mailed the documents to Mr. Scott.
[13] Transcript Vol. 2 at p. 119-121, 221-222 (Dec. 4, 2020).
[14] *Submission of Exhibit in Response to Commission Order* (Dec. 8, 2020).

provided to Mr. Scott pursuant to the December 10, 2020 order. In addition, the Commission ordered that a copy of the order along with copies of all of the exhibits – with the exception of the two proposed exhibits provided with the December 10 order – be mailed to Mr. Scott. The order provided that corrections to any of the admitted and filed exhibits be submitted no later than January 15, 2021. No corrections were received.

On January 22, 2021, the Commission issued a *Notice of Admitted and Filed Exhibits*, which provided a list of 17 exhibits admitted to the record after expiration of the objection and correction periods.[15] With the resolution of post-hearing filings on January 22, 2021, this matter was submitted to the Commission for decision.[16]

On March 22, 2021, the Commission issued an *Order Directing Notice of Recommended Report and Order*, which provided notice of the recommended order issued by the regulatory law judge, as provided by the Commission's rules governing small formal complaints.[17] The notice provided any comments on the recommended order were required to be filed no later than April 1, 2021. No comments were received as of April 1, 2021.

Findings of Fact

1. Spire Missouri Inc. d/b/a Spire is a "gas corporation" and "public utility" regulated by the Commission, pursuant to Section 386.020, RSMo (Supp. 2020).

2. Spire began providing residential gas service to Claude Scott at 3725 Geraldine Avenue, St. Ann, Missouri, in December 2018.[18]

[15] Ex. 105, which is a picture of a meter, was offered as a demonstrative exhibit.
[16] Commission Rule 20 CSR 4240-2.150(1).
[17] 20 CSR 4240-2.070(15)(G).
[18] *Stipulation of Undisputed Facts*, ¶ 3 (July 17, 2020); Ex. 200C: *Staff Memorandum*, p. 3; Transcript Vol. 2 at p. 185-186 (Dec. 4, 2020).

Meter reading and testing

3. Spire reads the gas meter at 3725 Geraldine Avenue through automated meter reading.[19] Automated meter reading allows a meter to be read remotely.[20] In-person meter reading is not necessary to read the gas meter at the property.[21]

4. Meter readings are indicated on Spire billing statements in boxes below the customer's name and address.[22] Billing statements based on actual meter reads, rather than estimated use, are indicated with the word "actual" appearing below the boxes indicating the "present" meter reading and "previous" meter reading on the statement.[23]

5. Billing statements issued for Mr. Scott's account and admitted to the record indicate "actual" meter reads.[24] Spire's billing of Mr. Scott's account for the period at issue is based on actual reads of the meter at 3725 Geraldine Avenue.[25]

6. On May 16, 2020, Spire service technician Brandon Wilken removed the gas meter in use at 3725 Geraldine Avenue and replaced it with a different meter.[26] The meter removed on May 16, 2020, had been installed at 3725 Geraldine Avenue in July 2008.[27]

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[19] Transcript Vol. 2 at p. 149-150 (Dec. 4, 2020); *Stipulation of Undisputed Facts*, ¶ 5 (July 17, 2020).
[20] Transcript Vol. 2 at p. 149-150 (Dec. 4, 2020); *see also Stipulation of Undisputed Facts*, ¶ 5 (July 17, 2020).
[21] Transcript Vol. 2 at p. 149-150 (Dec. 4, 2020); *see also Stipulation of Undisputed Facts*, ¶ 5 (July 17, 2020).
[22] Transcript Vol. 2 at p. 102 (Dec. 4, 2020).
[23] Transcript Vol. 2 at p. 102, 195 (Dec. 4, 2020).
[24] Billing statements admitted to the record for the period before Mr. Scott filed his complaint on January 16, 2020, are dated as early as June 5, 2019, and continue for each month through January 6, 2020. *See* Ex. 6 and Ex. 300 p. 3: June 2019; Ex. 7 and Ex. 300 p. 8: July 2019; Ex. 106: August 2019; Ex. 101 p. 1: September 2019; Ex. 101 p. 3: October 2019; Ex. 101 p. 6: November 2019; Ex. 4 and Ex. 101 p. 7: December 2019; Ex. 1 and Ex. 101 p. 8: January 2020 ("Statement Exhibits"). Mr. Scott also offered on the record select billing statements generated after Mr. Scott filed his complaint in January 2020, and those statements were accepted on the record without objection. Those statements also indicate billing based on actual meter reads, rather than estimates. *See* Ex. 3: April 2020; Ex. 5: June 2020; and Ex. 2: November 2020 ("Post-Complaint Statement Exhibits").
[25] Transcript Vol. 2 at p. 102, 195 (Dec. 4, 2020).
[26] Transcript Vol. 2 at p. 107, 143-145 (Dec. 4, 2020).
[27] Transcript Vol. 2 at p. 187-188 (Dec. 4, 2020).

7. Spire mailed a letter to Mr. Scott's address, dated June 1, 2020, advising that on June 15, 2020, Spire would test the meter removed from 3725 Geraldine Avenue.[28] The letter explained that Mr. Scott could witness the meter test and provided contact information to request more information.[29]

8. On June 15, 2020, a Spire shop supervisor tested the meter that had been removed from 3725 Geraldine Avenue to determine the accuracy of the meter.[30] When the results of the high-flow test and low-flow test were averaged, the test indicated the meter provided "exact" measurements.[31] The test performed on the meter indicated the meter was operating correctly.[32]

9. In an attempt to settle Mr. Scott's complaint, Spire again replaced the meter at 3725 Geraldine Avenue on July 25, 2020.[33]

Billing and Payments

10. Billing statements issued for Mr. Scott's account list charges authorized by Spire's tariff.[34] Charges appear on the Spire billing statements issued to Mr. Scott under four main categories: "delivery"; "natural gas cost"; "taxes"; and "other charges."[35]

11. The items listed under delivery on the Spire billing statements issued to Mr. Scott include a "customer charge," which is a standard amount or "flat" fee charged to each residential customer per billing period that does not change based on the amount

[28] Transcript Vol. 2 at p. 160-161 (Dec. 4, 2020); *See* Ex. 103: June 2020 Letter.
[29] Ex. 103: June 2020 letter.
[30] Transcript Vol. 2 at p. 159-160, 165-167 (Dec. 4, 2020).
[31] Transcript Vol. 2 at p. 166-170 (Dec. 4, 2020); Ex. 104: Special meter test form.
[32] Transcript Vol. 2 at p. 170 (Dec. 4, 2020).
[33] Transcript Vol. 2 at p. 107, 146-148 (Dec. 4, 2020); *see also Motion for Continuance* (July 23, 2020); *Status Report* (Sept. 21, 2020); *Status Report* (Oct. 21, 2020).
[34] Transcript Vol. 2 at p. 109 (Dec. 4, 2020).
[35] Transcript Vol. 2 at p. 102-104 (Dec. 4, 2020); *See* Statement Exhibits and Post-Complaint Statement Exhibits.

of gas used.[36] The statements admitted to the record indicate a $22 customer charge per billing period,[37] which is authorized by Spire's tariff.[38]

12. Also included under "delivery" is a "usage" charge, which is part of what Spire is authorized to charge for providing natural gas service.[39] The charge per "therm," which is a measure of gas used,[40] varies based on a summer or winter seasonal rate established by Spire's tariff.[41] The statements admitted to the record indicate a usage charge consistent with Spire's tariff.[42]

13. The delivery category includes additional adjustments, which may be amounts credited to the customer or amounts charged to the customer.[43] The adjustments in the delivery category include credits and/or debits for the Infrastructure System Replacement Surcharge (ISRS) and Weather Normalization Adjustment Rider (WNAR), which are authorized by Spire's tariff.[44]

14. The ISRS charge, also described as a "Pipeline Upgrade Charge" on some of the 2020 statements admitted to the record,[45] reflects approved costs for the replacement of eligible infrastructure.[46]

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[36] Transcript Vol. 2 at p. 103 (Dec. 4, 2020).
[37] Transcript Vol. 2 at p. 103 (Dec. 4, 2020); *See* Statement Exhibits and Post-Complaint Statement Exhibits.
[38] Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 7 Original Sheet No. 2 (effective April 19, 2018).
[39] Transcript Vol. 2 at p. 103-104 (Dec. 4, 2020). *See* Statement Exhibits and Post-Complaint Statement Exhibits.
[40] Transcript Vol. 2 at p. 103 (Dec. 4, 2020).
[41] Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 7 Original Sheet No. 2 (effective April 19, 2018).
[42] Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 7 Original Sheet No. 2 (effective April 19, 2018)(providing for charge per therm of $0.23330 from November through April and $0.20994 for the first 50 therms per month from May through October). *See* Statement Exhibits and Post-Complaint Statement Exhibits.
[43] *See* Statement Exhibits and Post-Complaint Statement Exhibits.
[44] Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 7 Original Sheet No. 2 (effective April 19, 2018)(authorizing ISRS, as provided by P.S.C. MO. No. 7 Sheet No. 12, and WNAR, as provided by Sheet No. 13); *see also* Transcript Vol. 2 at p. 103-104 (Dec. 4, 2020).
[45] *See* Post-Complaint Statement Exhibits.
[46] Transcript Vol. 2 at p. 103-104 (Dec. 4, 2020).

15. Spire's tariffs authorize the WNAR adjustment,[47] which appears as a credit, ranging from $0.07 to $1.13, on each of the Spire billing statements admitted to the record.[48]

16. The second category listed on Spire's billing statements to Mr. Scott is "natural gas cost," which is an adjustment related to the cost to Spire to buy, transport and store gas delivered to the service address.[49] During the relevant periods, Spire's tariffs authorized an adjustment for purchased gas costs.[50]

17. The third and fourth categories are taxes and "other charges."[51] A "St. Ann tax" is the only tax included on the billing statements admitted to the record.[52] Spire's tariffs authorize it to collect taxes.[53] The final category, "other charges," includes late payment charges, which are also authorized by Spire's tariff.[54]

18. Mr. Scott's complaint alleged Spire did not credit his account for an $86 payment made on September 1, 2019, and an $85 payment made on September 21, 2019.[55] In addition, a receipt for a $53 payment made on January 6, 2020, is attached to the complaint.[56]

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[47] Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 7 Original Sheet No. 13 (effective April 19, 2018).
[48] *See* Statement Exhibits and Post-Complaint Statement Exhibits.
[49] Transcript Vol. 2 at p. 103, 104 (Dec. 4, 2020).
[50] Effective November 15, 2018, Spire was authorized to charge $0.45672 per therm to residential customers under the purchased gas adjustment. *See* Spire Missouri Inc. d/b/a Spire for Spire Missouri East, P.S.C. MO. No. 7 First Revised Sheet No. 11.16. Effective November 15, 2019, Spire was authorized to charge $0.41274 per therm to residential customers. *See* Spire Missouri Inc. d/b/a Spire for Spire Missouri East, P.S.C. MO. No. 7 Second Revised Sheet No. 11.16. As of November 16, 2020, the authorized adjustment is $0.37193. *See* Spire Missouri Inc. d/b/a Spire for Spire Missouri East, P.S.C. MO. No. 7 Third Revised Sheet No. 11.16.
[51] *See* Statement Exhibits and Post-Complaint Statement Exhibits.
[52] *See* Statement Exhibits and Post-Complaint Statement Exhibits.
[53] Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 7 Original Sheet No. 14 (effective April 19, 2018).
[54] Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 7 Original Sheet No. 2 (effective April 19, 2018). Spire's tariff authorizes late charges of 1.5% of the outstanding balance. Late charges are the only types of "other charges" that appear on the billing statements on the record in this case. *See* Statement Exhibits and Post-Complaint Statement Exhibits.
[55] Ex. 301: Complaint, p. 3, 5, 7 (including receipts dated Sept. 1 and 21, 2019); *see also* Ex. 8: Receipts.
[56] Ex. 301: Complaint, p. 7 (including receipt dated Jan. 6, 2020); *see also* Ex. 8: Receipts.

19. Payment credits appear on Mr. Scott's account for an $86 payment made on September 1, 2019,[57] an $85 payment made on September 21, 2019,[58] and a $53 payment made on January 6, 2020.[59]

Disconnection notices and payment arrangements

20. Spire mailed a notice of disconnection dated June 4, 2019, to Mr. Scott.[60] The billing statement issued for Mr. Scott's account with a statement date of June 5, 2019, informed Mr. Scott his service was "scheduled to be shut off for nonpayment."[61]

21. Spire mailed a follow-up notice dated June 27, 2019, informing Mr. Scott service would be disconnected if Mr. Scott did not make a payment arrangement or make payment by July 11, 2019.[62] The billing statement issued for Mr. Scott's account, dated July 3, 2019, stated service was "scheduled to be shut off for nonpayment."[63]

22. Spire mailed a notice of disconnection dated July 5, 2019, to Mr. Scott.[64]

23. Mr. Scott entered a payment plan with Spire on about July 11, 2019.[65] Spire mailed to Mr. Scott a confirmation of payment arrangement details, dated July 11, 2019.[66] The payment plan called for an initial payment of $71 by July 12, 2019, with three monthly payments of $53.66 and one final payment to pay the remaining past-due balance.[67]

24. Payment records indicate a $71 payment on Mr. Scott's account on July 12,

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[57] Transcript Vol. 2 at p. 98, 104 (Dec. 4, 2020); Ex. 101 p. 1: September 2019 statement; Ex. 100: Account spreadsheet.
[58] Transcript Vol. 2 at p. 98, 104-105 (Dec. 4, 2020); Ex. 101 p. 3: October 2019 statement; Ex. 100: Account spreadsheet.
[59] Transcript Vol. 2 at p. 98, 135 (Dec. 4, 2020); Ex. 100: Account spreadsheet; Ex. 1 and Ex. 101 p. 8: January 2020 statement.
[60] Ex. 300 p. 1: June 4, 2019 notice.
[61] *See* Ex. 6 and Ex. 300 p. 3: June 2019 statement.
[62] Ex. 300 p. 6: Billing Notice.
[63] Ex. 7 and Ex. 300 p. 8: July 2019 statement.
[64] Ex. 300 p. 10: Final notice.
[65] Transcript Vol. 2 at p. 105, 110-111, 196 (Dec. 4, 2020).
[66] Transcript Vol. 2 at p. 125-126 (Dec. 4, 2020); Ex. 300 p. 12: Payment arrangement letter.
[67] Ex. 300 p. 12: Payment arrangement letter.

2019.[68] Billing statements generated in August, September and October 2019 indicate "payment arrangement" charges of $53.66 or $53.65, consistent with the letter stating the terms of the payment plan.[69]

25. Several months later, on January 22, 2020, Spire's system generated an offer for a payment arrangement, as the result of an inquiry to the company's "self-service" system, which may be accessed by telephone or internet.[70]

26. After receiving a proposed payment arrangement via the self-service system, a customer can finalize an agreement by contacting customer service to set it up and make an initial down payment.[71]

27. After the self-service offer was generated in January 2020, a payment arrangement for Mr. Scott's account was not finalized.[72]

28. As of the date of hearing, December 4, 2020, Spire had not, at any time, disconnected service to Mr. Scott at 3725 Geraldine Avenue.[73]

29. As of the date of hearing, the last time Spire issued a disconnection notice on Mr. Scott's account was in July 2019.[74]

Medical emergency form

30. To enable customers to show that service should not be disconnected because of a medical condition, Spire provides a form to be completed by a customer's

[68] Ex. 100: Account spreadsheet; Ex. 106: August 2019 statement.
[69] Ex. 106: August 2019 statement; Ex. 101 p. 1: September 2019 statement; Ex. 101 p. 3: October 2019 statement.
[70] Transcript Vol. 2 at p. 105, 112, 196 (Dec. 4, 2020).
[71] Transcript Vol. 2 at p. 111 (Dec. 4, 2020).
[72] Transcript Vol. 2 at p. 111, 196 (Dec. 4, 2020).
[73] Transcript Vol. 2 at p. 87, 106 (Dec. 4, 2020); *see also Stipulation of Undisputed Facts*, ¶ 6 (July 17, 2020).
[74] Transcript Vol. 2 at p. 106, 112 (Dec. 4, 2020).

physician and returned to the company ("medical emergency form").[75]

31. Based on a contact with Mr. Scott by telephone regarding possible disconnection of service,[76] a Spire customer service supervisor on June 10, 2019, requested a medical emergency form be mailed to Mr. Scott.[77] Spire records indicate the form was mailed.[78] Unlike the supervisor, the first Spire customer service representative who spoke with Mr. Scott on June 10, 2019, did not offer the medical emergency form.[79]

32. Connie Sanchez, a Spire outreach specialist, sent the medical emergency form to Mr. Scott by email on June 10, 2019, using the same email address Ms. Sanchez had previously used to communicate with Mr. Scott.[80]

33. After sending the form by email, Ms. Sanchez called Mr. Scott and attempted to confirm he had received the form.[81] She attempted to call three times, and two of the calls were disconnected.[82] Ms. Sanchez was not able to speak to Mr. Scott to confirm he had received the form.[83]

34. As of the date of hearing, a medical emergency form has not been returned to Spire for Mr. Scott's account.[84]

[75] Transcript Vol. 2 at p. 114, 215 (Dec. 4, 2020).
[76] Transcript Vol. 2 at p. 128, 212 (Dec. 4, 2020).
[77] Transcript Vol. 2 at p. 107, 113, 212 (Dec. 4, 2020).
[78] Transcript Vol. 2 at p. 127-128 (Dec. 4, 2020).
[79] Transcript Vol. 2 at p. 106-107, 113, 198, 212-213 (Dec. 4, 2020); *see also* Ex. 200C: Staff Memorandum, p. 5, 6.
[80] Transcript Vol. 2 at p. 107, 128 (Dec. 4, 2020). Ms. Sanchez's testimony indicates she used the same email address used by Mr. Scott in this proceeding. *See* Transcript Vol. 2 at p. 113; *Response to Spire's Request for Mediation* (Feb. 18, 2020).
[81] Transcript Vol. 2 at p. 113, 129-130 (Dec. 4, 2020).
[82] Transcript Vol. 2 at p. 113, 129-130 (Dec. 4, 2020).
[83] Transcript Vol. 2 at p. 114 (Dec. 4, 2020).
[84] Transcript Vol. 2 at p. 216 (Dec. 4, 2020).

Conclusions of Law

Preliminary matters

A. Section 386.480, RSMo (2016), limits the public disclosure of information furnished to the Commission, with the exception of "such matters as are specifically required to be open to public inspection" by the provisions of Chapters 386 and 610, RSMo.

B. The Commission may make information furnished to the Commission open to the public "on order of the Commission" and "in the course of a hearing or proceeding."[85]

C. Customer-specific information may be designated confidential under Commission rules.[86] The confidentiality provisions of Commission rules may be waived by the Commission for good cause.[87]

D. The Commission may take official notice to the same extent as the courts take judicial notice.[88]

Commission jurisdiction – Burden of proof

E. Spire is a "gas corporation" and a "public utility" as those terms are defined in Section 386.020, RSMo (Supp. 2020).

F. Spire is subject to the Commission's jurisdiction, supervision and regulation as provided in Chapters 386 and 393, RSMo. The Commission has jurisdiction over the manufacture, sale and distribution of gas within the state.[89]

[85] Section 386.480, RSMo (2016).
[86] Commission Rule 20 CSR 4240-2.135.
[87] Commission Rule 20 CSR 4240-2.135(19).
[88] Section 536.070(6), RSMo (2016).
[89] *See* sections 386.040 and 386.250(1), RSMo (2016).

G. Section 386.390.1, RSMo (Supp. 2020), permits any person to make a complaint to the Commission "setting forth any act or thing done or omitted to be done" by any public utility "in violation, of any provision of law subject to the [C]ommission's authority, of any rule promulgated by the [C]ommission, of any utility tariff, or of any order or decision of the [C]ommission."

H. In a complaint before the Commission, the person bringing the complaint has the burden of showing that a public utility has violated a provision of law subject to the Commission's authority, or a Commission rule, order or Commission-approved tariff.[90]

I. The determination of witness credibility is left to the Commission, "which is free to believe none, part, or all of the testimony."[91]

Commission-approved tariffs

J. Among the general powers of the Commission is the authority, pursuant to Section 393.140(11), RSMo (2016), to require every gas corporation to file with the Commission and to print and keep open to public inspection "schedules showing all rates and charges made, ... all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used."[92]

K. Such rate schedules and rules and regulations are commonly referred to as "tariffs."[93]

L. A tariff is a document that lists a public utility's services and the rates for

[90] *State ex rel. GS Techs. Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).
[91] *Office of Pub. Counsel v. Evergy Mo. W., Inc.*, 609 S.W.3d 857, 865 (Mo. App. W.D. 2020) (quoting *In re Kan. City Power & Light Co.'s Request for Auth. to Implement Gen. Rate Increase for Elec. Serv. v. Pub. Serv. Comm'n*, 509 S.W.3d 757, 766 (Mo. App. W.D. 2016)).
[92] *See also State ex rel. Inter-City Beverage Co., Inc. v. Pub. Serv. Comm'n*, 972 S.W.2d 397, 400 (Mo. App. W.D. 1998).
[93] In the context of cases before the Commission, the terms "tariffs" and "rate schedule" are synonymous. *See State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 311 S.W.3d 361, 364 n.3 (Mo. App. W.D. 2010).

those services.[94] Both a utility and its customers are presumed to know the contents and effect of published tariffs.[95]

M. Commission-approved tariffs may also include provisions governing regulations, practices and services that are prescribed by the Commission and applicable to the public utility and its customers.[96]

N. A tariff approved by the Commission becomes Missouri law and has the same force and effect as a statute enacted by the General Assembly.[97]

Commission rule and tariff provisions

O. Commission rules require Spire to render a bill for each billing period to residential customers based on actual usage for the billing period, unless certain exceptions apply.[98]

P. Automated meter reading is authorized by Spire's tariff, which states: "The Company may install on the meter a remote reading attachment, the readings from which constitute actual meter readings."[99]

Q. Commission rules require Spire to identify any bill based on estimated usage by "clearly and conspicuously" stating that the bill is based on estimated usage.[100]

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[94] *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006) (quoting *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997)).
[95] *A.C. Jacobs & Co., Inc. v. Union Elec.* Co, 17 S.W.3d 579, 585 (Mo. App. W.D. 2000) (citing *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997)).
[96] *See* Section 386.270, RSMo (2016); *A.C. Jacobs & Co., Inc. v. Union Elec. Co.*, 17 S.W.3d 579, 581-85 (Mo. App. W.D. 2000) (approved tariff that is not subject to challenge is deemed lawful and reasonable and establishes rules governing utility's duty to customers).
[97] *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997).
[98] 20 CSR 4240-13.020(1), (2).
[99] *See* Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 8 Original Sheet No. R-9 (effective April 19, 2018).
[100] 20 CSR 4240-13.020(2)(C)5.

R. When a payment agreement will extend beyond 90 days, Commission Rule 20 CSR 4240-13.060 requires that a utility mail or deliver the terms of a payment agreement to a customer in writing.

Cold Weather Rule

S. The Cold Weather Rule, 20 CSR 4240-13.055, prohibits the disconnection of gas and electric service to residential users for nonpayment of bills under specified circumstances, including on any day when the National Weather Service morning forecast predicts a local temperature drop below 32 degrees Fahrenheit in the next 24-hour period.[101]

T. The Cold Weather Rule prohibits disconnection of service from November 1 through March 31 due to nonpayment when a customer meets certain requirements, including entering into a payment agreement.[102] The rule includes special provisions to govern payment agreements available to customers under the rule.[103]

Medical emergencies

U. Commission Rule 20 CSR 4240-13.050(10) provides that a utility shall postpone disconnection of service for no more than 21 days when a service disconnection "will aggravate an existing medical emergency" for the customer or a member of the customer's family or household.

V. Commission Rule 20 CSR 4240-13.050(10) provides that, if requested by the utility, any person alleging such a medical emergency "shall provide the utility with reasonable evidence" to establish a medical necessity to avoid disconnection.

[101] 20 CSR 4240-13.055(5)A. The conclusions of law stated here broadly summarize only the provisions of the Cold Weather Rule potentially relevant to Mr. Scott's complaint.
[102] 20 CSR 4240-13.055(6).
[103] 20 CSR 4240-13.055(10).

Decision

Preliminary matters

Limited disclosure of account information: Most of the documents filed in this case have been designated as "confidential," as permitted by the Commission's rules, which provide for the confidentiality of customer-specific information. Because it is necessary for the Commission to make specific findings of fact regarding Mr. Scott's account history to decide Mr. Scott's complaint, the Commission finds good cause exists to make public elements of Mr. Scott's billing statements and other specific account information to the extent such information is expressly disclosed in this order. This order authorizes such disclosure, pursuant to the Commission's authority under Section 386.480, RSMo (2016), and 20 CSR 4240-2.135(19).

Official notice of Spire tariffs: The Commission has taken official notice of Spire's tariffs in effect during the relevant time period in this case. Mr. Scott's objection to such notice is overruled on the grounds that Mr. Scott's complaint calls into question Spire's compliance with its tariffs. Therefore, Mr. Scott's argument during the hearing that he has not received a copy of such tariffs provides no basis to prevent the Commission from consulting the tariffs, as necessary, to decide this case. Current tariffs are available to the public at the company's offices, the company's website and the Commission's website.[104] Knowledge of Commission-approved tariffs is presumed as a matter of law

[104] Tariffs on file with the Commission are available to the public through the Commission's website, https://psc.mo.gov. In addition, Section 393.140(11), RSMo (2016), authorizes the Commission to require every gas corporation to file with the Commission and "print and keep open to the public" "schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used." Accordingly, Commission Rule 20 CSR 4240-40.085 requires gas corporations to file with the Commission and "keep open for public inspection" "schedules showing all rates and charges ... together with proper supplements covering all changes in the rate schedules" authorized by the Commission. In addition, the Commission's rules require gas corporations to publish rate schedules on the corporation's website. *See*

and no additional notice is required.[105]

Denial of untimely request: Mr. Scott's request that the Commission direct Spire to provide additional documents is denied as untimely. Based on the parties' proposed procedural schedule, all such requests for information from another party were to be submitted no later than June 22, 2020.[106] On December 1, 2020, three days before the hearing date, Mr. Scott filed a letter alleging that Spire had failed to respond to a request for discovery and attached a document entitled "Complainant's Motion for Discovery."[107] During the hearing, Spire's counsel advised the Commission that no request for information had been received from Mr. Scott.[108] Counsel for Staff stated Staff was not aware of a prior discovery request from Mr. Scott.[109] The document labeled "Complainant's Motion for Discovery" is not dated.

The request seeks "monthly billing" "for the billing period of 04/2019 to 10/2020," to be provided "prior to November 23, 2020."[110] At hearing, Mr. Scott did not provide a date when he submitted the request to Spire, nor did he provide any documentation or other evidence to determine the date of the request.[111] Based on the fact that the request seeks billing through October 2020 to be provided by November 23, 2020, the Commission concludes any such request was made after June 22, 2020, and is untimely.

Commission Rule 20 CSR 4240-40.085(2). Spire's tariffs provide that copies of its tariffs, as filed with the Commission, are available at the company's offices and the company's website. *See* Spire Missouri Inc. d/b/a Spire, P.S.C. MO. No. 8 Original Sheet No. R-4 (effective April 19, 2018).

[105] Both a utility and its customers are presumed to know the contents and effect of published tariffs under the "filed tariff doctrine." *See Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997).

[106] *Notice of Hearing and Order Setting Procedural Schedule* (June 5, 2020); *see also Joint Proposed Procedural Schedule* (June 4, 2020).

[107] *Letter Dated Nov. 25, 2020, Attachment: "Complainant's Motion for Discovery"* (Dec. 1, 2020).

[108] Transcript Vol. 2 at p. 37 (Dec. 4, 2020).

[109] Transcript Vol. 2 at p. 37 (Dec. 4, 2020).

[110] *Letter Dated Nov. 25, 2020, Attachment: "Complainant's Motion for Discovery"* (Dec. 1, 2020).

[111] Transcript Vol. 2 at p. 32-40 (Dec. 4, 2020).

Mr. Scott offered no reason to justify a late request and did not explain how additional billing information will be useful or relevant to this case.

The Commission notes that documents provided to Mr. Scott before hearing on December 4, 2020, collectively provide billing, payment and usage information for Mr. Scott's account from January 2019 through January 6, 2020, addressing the bulk of his request. Before the hearing on December 4, Spire filed a disclosure of proposed exhibits, which included billing statements from September 2019 through January 2020.[112] On December 3, 2020, Spire filed confirmation of delivery of those proposed exhibits to Mr. Scott,[113] and Mr. Scott acknowledged receipt during the hearing.[114] The proposed exhibits Spire disclosed to Mr. Scott also included an account summary, later admitted to the record as Exhibit 100, that states billed amounts, payments, usage and the running balance on Mr. Scott's account from January 4, 2019, through July 6, 2020.[115]

Mr. Scott himself offered billing statements for June and July 2019 into the record.[116] When Ms. Sanchez's testimony addressed the August 2019 statement, which was not in the record, the presiding officer directed Spire to file the August 2019 statement, subject to objection.[117] On December 8, 2020, Spire filed a billing statement dated August 5, 2019. On December 10, 2020, the Commission directed that the August 2019 statement be mailed to Mr. Scott, along with an order requiring any objections to be

[112] *Response to Order Directing Filing in Advance of Hearing* (Nov. 25, 2020).
[113] *Spire's Response to Commission Order Regarding Delivery of Exhibits* (Dec. 3, 2020).
[114] Transcript Vol. 2 at p. 100-101 (Dec. 4, 2020).
[115] *See Response to Order Directing Filing in Advance of Hearing*, Attachment: p. 9 (Nov. 25, 2020); *Spire's Response to Commission Order Regarding Delivery of Exhibits* (Dec. 3, 2020); Ex. 100: Account Spreadsheet.
[116] See Ex. 6 and Ex. 7; *see also* Ex. 300 p. 3, 8.
[117] Transcript Vol. 2 at p. 119-121, 221-222 (Dec. 4, 2020).

submitted no later than December 31, 2020.[118] No objections were received.[119] In addition, at Mr. Scott's request, additional billing statements for April 2020, June 2020 and November 2020 were admitted to the record.[120]

In all, billing statements for June 2019 through January 2020, as well as assorted 2020 statements, were admitted to the record after Mr. Scott was provided the opportunity to review and object to all such statements.[121] Mr. Scott has offered no reason why additional billing statements are necessary for the Commission's decision. Therefore, Mr. Scott's request, filed on December 1, 2020, will be denied.

Complaint

Mr. Scott's complaint alleges Spire billed him based on inaccurate estimates and failed to read his meter, overbilled him, failed to credit his account for payments, failed to offer a payment plan and violated the Commission's Cold Weather Rule. Mr. Scott has not met his burden to show that Spire violated statute, Commission rule or the company's tariffs.

The evidence on the record indicates Spire billed Mr. Scott as authorized by the company's tariffs based on actual, regular reads of the meter installed at 3725 Geraldine Avenue. Spire's tariffs authorize the company to use automated meter reading, which allows Spire to regularly read the meter without sending a technician to view the meter. The evidence provides no indication that Spire generated estimated bills for Mr. Scott's account during the period reviewed from June 2019 through January 2020, when Mr.

[118] *Notice of Proposed Exhibits and Order Directing Filing of Objections* (Dec. 10, 2020). The Commission's order also provided a copy of a June 2020 letter that Mr. Scott testified he had not received. The June 2020 letter was admitted as Exhibit 103 when no objection was filed.
[119] *Notice of Admitted and Filed Exhibits* (Jan. 22, 2021).
[120] *See* Post-Complaint Statement Exhibits.
[121] *See* Statement Exhibits and Post-Complaint Statement Exhibits.

Scott filed his complaint. In addition, the billing statements offered on the record by Mr. Scott for the period after January 2020 also indicate billing based on actual reads.

No evidence has been presented to suggest any malfunction of the meter in use at 3725 Geraldine Avenue during the period at issue. The meter installed at the residence from July 2008 until May 16, 2020, provided accurate measurements when tested in June 2020. The second meter exchange, which was performed by Spire at Mr. Scott's request in July 2020, is not relevant to any of the issues in this case because the meter in place at the time of Mr. Scott's complaint had previously been removed and tested. No evidence has been presented to indicate a problem with any Spire meter in use at 3725 Geraldine Avenue.

No evidence on the record supports a finding of overbilling. Billing statements on the record indicate Spire billed Mr. Scott in accord with the rates and charges established by Spire's tariffs. Mr. Scott testified that he was confused by his bills and did not understand the basis of many of the items listed on his bills.[122] However, there is no evidence on the record that Spire's billing of Mr. Scott's account is inconsistent with the company's Commission-approved tariff.

The evidence on the record also indicates Spire credited Mr. Scott's account for the three payments mentioned in the complaint, including the two payments Mr. Scott alleged he had not received credit for. There is no credible evidence on the record to support a finding that Mr. Scott has not received credit for payments made on his account.

The evidence also indicates Spire appropriately offered Mr. Scott payment arrangements to manage past-due balances. Based on the evidence on the record,

[122] Transcript Vol. 2 at p. 41-42, 72 (Dec. 4, 2020).

Mr. Scott sought a payment plan in July 2019, after Spire mailed two disconnection notices. The Commission finds that Mr. Scott's testimony that he did not enter into a payment plan with Spire in 2019[123] is not credible. Mr. Scott offered no evidence in support of this contention, which is inconsistent with testimony and documents admitted to the record. In addition, the evidence on the record indicates Spire's system generated the terms of a possible payment plan for Mr. Scott's account in January 2020 based on a "self-service" inquiry by phone or internet. This potential payment arrangment was not finalized.

There is no evidence on the record to indicate violation of the Cold Weather Rule. Mr. Scott's complaint appears to suggest the company inappropriately threatened to disconnect service. No evidence was presented indicating Spire issued a disconnection notice on Mr. Scott's account in violation of any rule or tariff. In general, the provisions of the Cold Weather Rule are in place from November 1 through March 31. The rule prohibits disconnection under specified circumstances. The evidence on the record indicates Spire has not disconnected service to Mr. Scott and did not issue a disconnection notice on Mr. Scott's account at any point after July 2019. While the rule includes requirements for advance notice of disconnection,[124] the rule does not prohibit all disconnections, nor does it prohibit the use of disconnection notices. As noted above, Spire's "self-service" system generated a possible payment plan on Mr. Scott's account in January 2020, during the winter season covered by the Cold Weather Rule.

Finally, evidence on the record indicates that on June 10, 2019, a Spire customer service representative failed to offer a form to Mr. Scott to help him demonstrate that he

[123] Transcript Vol. 2 at p. 83, 85-87 (Dec. 4, 2020).
[124] 20 CSR 4240-13.055(3).

was experiencing a medical emergency. When such a medical emergency is demonstrated, Commission rule requires the utility to temporarily abstain from service disconnection. Mr. Scott testified he has never received a form from Spire regarding any medical condition.[125] Testimony at hearing established that a Spire supervisor arranged for Spire to mail a medical emergency form to Mr. Scott; testimony indicates the form was also sent by email. A lapse in offering the medical emergency form, when corrected the same day, does not support a finding of violation of statute, Commission rule, or Spire's tariffs.

Mr. Scott has not met his burden to establish a violation of statute, rule or tariff. The Commission will deny Mr. Scott's complaint.

THE COMMISSION ORDERS THAT:

1. Because of the necessity of considering customer-specific account information to decide Mr. Scott's complaint, that information is made public to the extent such information is disclosed in this order. Such disclosure is hereby authorized as provided by Section 386.480, RSMo (2016).

2. Mr. Scott's request to the Commission filed on December 1, 2020, in the form of a letter and an attached "Motion for Discovery," is denied.

3. Mr. Scott's complaint is denied.

4. Spire may proceed with Mr. Scott's account consistent with the law, the company's tariffs and the Commission's rules.

5. In accordance with Commission Rule 20 CSR 4240-2.070(14), all parties are notified as follows: Section 386.500, RSMo (2016), requires any application for

[125] Transcript Vol. 2 at p. 73 (Dec. 4, 2020).

rehearing to be filed with the Commission before the effective date of the Commission's order to preserve the right to seek judicial review of a Commission decision. Applications for rehearing before the Commission are governed by 20 CSR 4240-2.160 and Section 386.500, RSMo. Applications for rehearing may be filed through the Commission's electronic filing and information system (EFIS) or by mail to:

Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

EFIS may be accessed from the Commission's website, https://psc.mo.gov.

6. This order shall be effective on May 7, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Jacobs, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of The Public Water Supply District No. 2 of St. Charles County, Missouri and the City of Wentzville, Missouri for Approval of an Amendment to their Intergovernmental Territorial Agreement	))))))	**File No. WO-2021-0253**

REPORT AND ORDER APPROVING SECOND AMENDMENT TO TERRITORIAL AGREEMENT

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

Since the City and the District filed a joint application stating that the parties agreed to the second amendment to the territorial agreement and no one has requested a hearing, no hearing is required.

WATER

§11. Territorial agreements

The Commission has jurisdiction over territorial agreements for the sale and distribution of water under Section 247.172, RSMo. The Commission may approve a territorial agreement if the Commission determines that the territorial agreement is not 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 14th day of April, 2021.

In the Matter of the Joint Application of The Public Water Supply District No. 2 of St. Charles County, Missouri and the City of Wentzville, Missouri for Approval of an Amendment to their Intergovernmental Territorial Agreement	))))))	**File No. WO-2021-0253**

REPORT AND ORDER APPROVING SECOND AMENDMENT TO TERRITORIAL AGREEMENT

Issue Date: April 14, 2021 Effective Date: May 14, 2021

This order approves the Second Amendment to the territorial agreement between the Public Water Supply District No. 2 of St. Charles County, Missouri (the District) and the City of Wentzville (City) (collectively the "Joint Applicants").

Findings of Facts

1. The City is a fourth class city, organized and operating under Chapter 79 of the Revised Statutes of Missouri.[1] The City operates a municipally-owned water utility in St. Charles County, Missouri. The City is a political subdivision of the state of Missouri and is not subject to regulation by the Commission except for purposes of this file. The City's principal place of business is located at 1001 Schroeder Creek, Wentzville, Missouri 63385.

2. The District is a public water supply district organized under Chapter 247 of the Revised Statutes of Missouri. The District provides water service at retail and

[1] All citations to RSMo are to the 2016 edition.

wholesale to customers located within the District's water service area in and around St. Charles County and Warren County, Missouri. The District is a political subdivision of the State of Missouri and is not subject to regulation by the Commission except for purposes of this application. The District's principal place of business is located at 100 Water Drive, O'Fallon, Missouri 63366.

3. On October 17, 2000, in File No. WO-2000-849, the City and the District received the Commission's approval of their original agreement. On November 14, 2011, the Commission approved the first amendment to the original agreement in its Report and Order issued in File no. WO-2012-0088. On February 9, 2021, the City and District filed a Joint Application for Approval of an Amendment to Intergovernmental Territorial Agreement (Application).

4. On February 10, 2021, the Commission ordered that notice of the application be provided to potentially interested persons and established February 25, 2021, 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 application no later than March 26, 2021.

5. On March 26, 2021, Staff filed a recommendation advising the Commission to approve the Second Amendment. No one has filed an objection, nor has anyone requested a hearing.

6. The Second Amendment provides that all provisions of the Original Agreement and the First Amendment shall remain and continue in full force and effect in all respects except as provided in the Second Amendment.

7. The Second Amendment extends the territorial agreement term an additional twenty years and modifies certain portions of the boundaries of the two water service areas that the City and the District will serve. The Second Amendment will not result in a change of supplier for any current customer of either the City or the District.

8. Based on the information provided in the application and Staff's recommendation, the Commission finds that the Second Amendment in total is not detrimental to 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. Section 247.172.5, RSMo, 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 the City and the District filed a joint application therein stating that the parties agreed to the second amendment to the territorial agreement and no one has requested a hearing, no hearing is required.[2]

Decision

Having considered the joint application and Staff's recommendation in support of approval of the application, the Commission finds that the parties have agreed to the terms and conditions of the Second Amendment and that otherwise no other person has objected thereto. The Commission concludes the Second Amendment between the parties in total is not detrimental to the public interest and will be approved.

THE COMMISSION ORDERS THAT:

1. The Second Amendment to the Territorial Agreement between the City of Wentzville, Missouri and Public Water Supply District No. 2 of St. Charles County, Missouri, is approved.

2. The City and District are authorized to provide water service to the property described in the Second Amendment, included with this order as Attachment A.

3. The City and District are authorized to do such other acts and things, including making, executing, and delivering any and all documents that may be

[2] See also *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), stating that the requirement for a hearing is met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence.

necessary, advisable, or proper to effect the terms and conditions of the Second Amendment and to implement the authority granted by the Commission in this order.

4. This order shall become effective on May 14, 2021.

5. This file shall be closed on May 15, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and Holsman CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Linda Beecham,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. WC-2020-0181**
	)	
Missouri-American Water Company,	)	
	)	
Respondent.	)	

AMENDED REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§26. Burden of proof

The complainant has the burden of proving that the utility violated a law under the Commission's authority, a Commission rule, an order of the Commission or its tariff.

WATER

§8. Jurisdiction and powers of the State Commission

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. Thus, it has no authority to enter a money judgment. But it may order adjustments for an overcharge.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Linda Beecham,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. WC-2020-0181**
	)	
Missouri-American Water Company,	)	
	)	
Respondent.	)	

AMENDED REPORT AND ORDER

Issue Date: April 28, 2021

Effective Date: May 28, 2021

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Linda Beecham,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. WC-2020-0181**
	)	
Missouri-American Water Company,	)	
	)	
Respondent.	)	

Appearances

Linda Beecham
Complainant, appeared pro se

Jennifer L. Hernandez
Timothy W. Luft
Attorneys for Missouri-American Water Company

Karen Bretz
Attorney for the Staff of the Commission

Judge: Paul T. Graham

Procedural History

This is a consumer formal complaint filed on December 20, 2019, where Linda Beecham disputes the recorded water usage and associated billing charges for water service provided by Missouri-American Water Company (MAWC) from October 27, 2014, to July 27, 2018.[1] She alleges an amount at issue of approximately $6,000.00. An evidentiary hearing was held on June 25, 2020. On September 16, 2020, the Commission

[1] The Complaint does not expressly identify the parameters of the time period. See Exhibit 1, Complaint. Exhibit 200, Figueroa Rebuttal, p. 2.

reopened the record and ordered MAWC to file its records under proper affidavit showing with respect to Ms. Beecham's meter, whether it complied with or had a waiver from Commission Rule 20 CSR 4240-10.030(38), which requires water meters be tested every ten years.[2] On September 25, 2020, MAWC filed the Affidavit of Tracie Figueroa in response to the Commission's Order (Affidavit). On September 29, 2020, the Commission issued a second order directing MAWC to clarify its prior response to the September 16 order, noting therein that MAWC's Affidavit did "not address MAWC's compliance with the 10-year inspection and testing requirement of 20 CSR 4240-10.030(38), nor does it indicate whether the Commission has granted MAWC a waiver from that requirement of the rule."[3] The September 29 order set October 26 as a deadline for objections to the receipt of MAWC's Affidavit and subsequent clarification. On October 13, 2020, Ms. Beecham submitted a filing captioned Rebuttal to Procedures of the Testing of My Meter. MAWC, the Staff of the Commission (Staff), and Ms. Beecham filed post-hearing briefs. On January 13, 2021, the Commission issued a Report and Order, and on February 11, MAWC filed an Application for Rehearing. This application challenged the Report and Order in part based on MAWC's September 25, 2020 Affidavit, arguing, in essence, that the Commission had given no consideration to the Affidavit.

The Commission did receive, consider and weigh the evidence presented in the Affidavit and its attachments, and the Commission will amend its January 13, 2021 Report and Order to clarify the consideration which the Commission gave in its Report and Order

[2] (38) Unless otherwise ordered by the commission, each water service meter installed shall be periodically removed, inspected and tested in accordance with the following schedule, or as often as the results obtained may warrant to insure compliance with the provisions of section (37) of this rule: (A**)** Five-eighths inch (5/8") meter-ten (10) years or two hundred thousand (200,000) cubic feet whichever occurs first. . . .
[3] Order Directing Filing, September 29, 2020.

to the Affidavit. The Amended Report and Order will be given a thirty-day effective date, allowing parties until May 28, 2021 to file any applications for rehearing of the Amended Report and Order.

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."[4] Rule 20 CSR 4240-2.135 contains provisions for the protection of customer information. In this case, Ms. Beecham has placed her water usage and bills at issue and no evidence relevant to that issue will be considered confidential. Only information pertaining to Ms. Beecham's address, the name and address of her daycare business and the identity of her employees will be considered confidential.

Findings of Fact

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight

[4] All RSMo citations will be to 2016 unless otherwise indicated.

to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.[5]

1. MAWC is a water corporation that owns, operates, manages, and controls a water supply, distributing water for gain in the state of Missouri.[6]

2. At all times herein stated, Ms. Beecham has been a water customer of MAWC.[7]

3. After Ms. Beecham filed her formal complaint on December 20, 2019, Staff conducted a full investigation of that complaint.[8]

The Water Usage Record

4. Ms. Beecham moved into her home in January of 1998.[9] Since then she has had either one or two daughters residing with her at any time.[10] She began running a daycare center in August 2000.[11] She is licensed for up to ten children.[12] Attendance varied between three and nine children, with an average of approximately six, between January of 2014 and September of 2019.[13]

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[5] 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). With respect to the appellate standard for reviewing Commission decisions, this case stated, further:

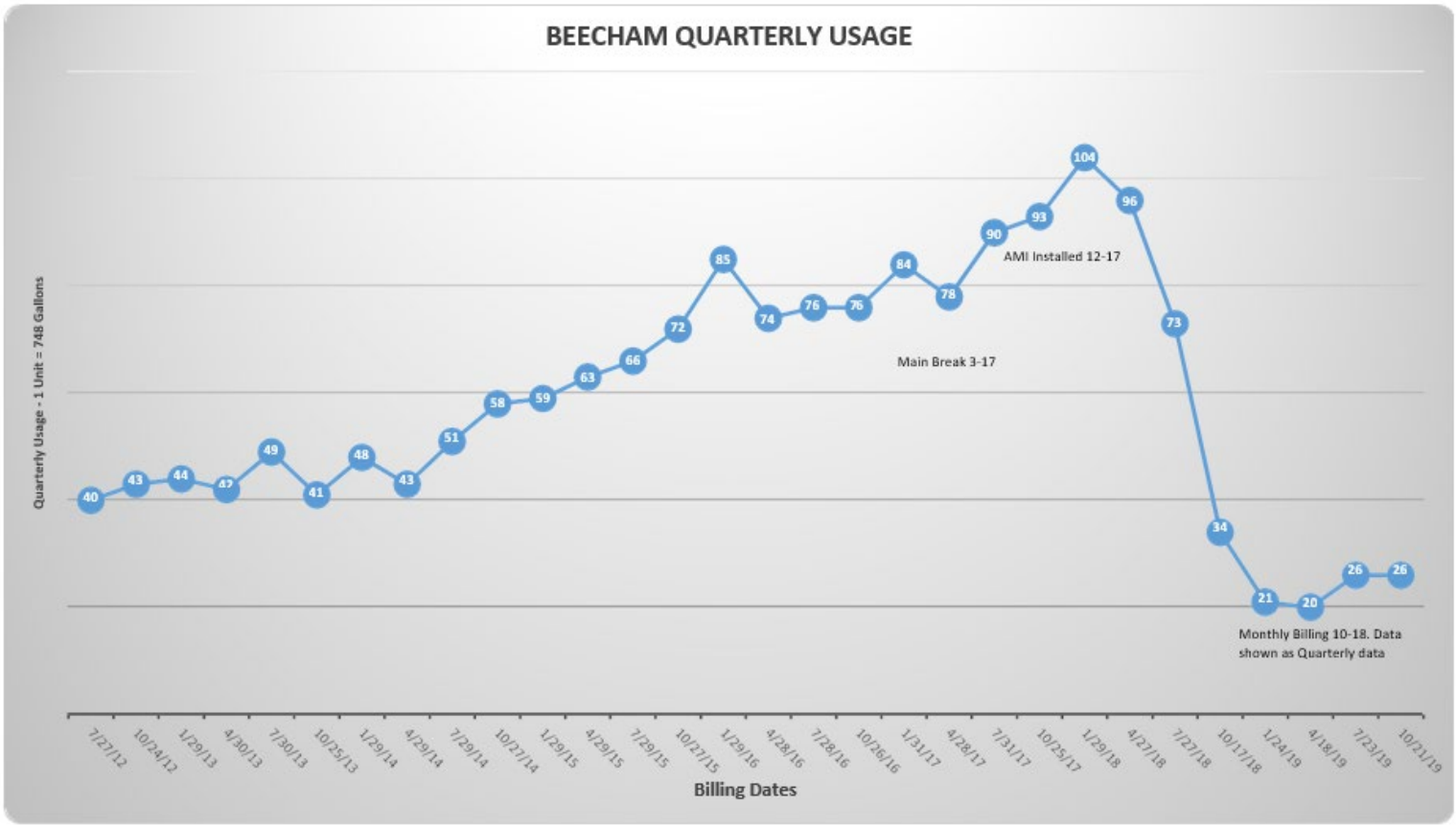
> "[I]f substantial evidence supports either of two conflicting factual conclusions, '[we are] bound by the findings of the administrative tribunal.' [citation omitted] The determination of witness credibility is a subject best left to the Commission, 'which is free to believe none, part, or all of [a witness's] testimony.' [citations omitted] We will not re-weigh the evidence presented to the Commission. [citation omitted]."

[6] Exhibit 201, Answer to Complaint, p. 1.
[7] Exhibit 100, Staff Report, Official Case File Memorandum, and Exhibit 201, Answer to Complaint, p. 1
[8] Ex. 100, Staff Report, Official Case file Memorandum.
[9] Transcript, p. 31.
[10] Transcript, pp. 32 to 33.
[11] Transcript, p. 33.
[12] Transcript, p. 33.
[13] Transcript, p. 33-34; Family Home Inspection Reports prepared by the Missouri Department of Health and Senior Services, Section for Child Care Regulation, for inspections conducted on January 24, 2014; August 26, 2014; February 2, 2015; September 25, 2015; February 18, 2016; August 24, 2016; August 29, 2017; February 15, 2018; August 20, 2018; and September 5, 2018, show that during these inspections,

5. Ms. Beecham continues to run a daycare facility in her home and has had approximately eight children in her daycare consistently since December of 2017.[14] She provides daycare five days a week.[15] The parents leave a change of clothes with her, and she does two loads of laundry for the children every other weekend.[16] Ms. Beecham cooks two meals per day for the children and runs her dishwasher once a day.[17] She has followed this and her housecleaning routines consistently for the last eight years.[18] She does not have a pool or lawn sprinkler system.[19] There have been no significant repairs to her plumbing or changes in her lifestyle or water usage.[20]

up to three staff members had been present in the home in addition to up to nine children, Attachment C of Answer to Complaint, received without objection as Exhibit 201.
[14] Transcript, p. 52.
[15] Transcript, p. 36.
[16] Transcript, pp. 37, 38.
[17] Transcript. p. 43.
[18] Transcript pp. 40-41.
[19] Transcript pp. 20-21.
[20] Transcript, pp. 45-46; 52.

6. As part of its investigation, Staff examined Ms. Beecham's usage history.[21] The Commission finds that this graph, prepared by Staff, accurately represents MAWC's reports of Ms. Beecham's water usage throughout the relevant time:[22]



7. As reflected on the graph, the following events occurred:

- A break in MAWC's water main in front of Ms. Beecham's home occurred in March 2017.[23]

[21] Exhibit 100, Staff Report, Official Case file Memorandum.
[22] Exhibit 100, Staff Report, Official Case File Memorandum.
[23] Transcript, p. 87.

- MAWC implemented Advanced Metering Infrastructure (AMI) meter reading and installed a meter transmission unit (MTU) device on the existing meter serving Ms. Beecham's home in December 2017.[24]
- MAWC began billing Ms. Beecham monthly for water usage after the October 17, 2018 bill.[25] Prior to then she was billed quarterly.[26]

8. MAWC's water meters register usage in units. A unit of water is equal to 100 cubic feet, which is equivalent to 748 gallons.[27]

9. Ms. Beecham's quarterly bills from July 27, 2012, through July 31, 2017, show a gradual upward usage trend, increasing from 40 to 90 units.[28] Reported water usage after the March 2017 main break continued to increase each quarter, reaching a peak of 104 units, reflected on the January 29, 2018 bill.[29]

10. Overall, from 2014 into the first half of 2018, Ms. Beecham's reported usage steadily increased. The April 27, 2018 bill for the first full quarter after AMI was installed in December of 2017 showed a usage decrease. The July 27, 2018, and October 17, 2018, bills then showed a drastic decrease. Per Staff's calculations, which no party challenged, bills from April 2019 to March 6, 2020 averaged approximately 27 units per quarter.[30]

[24] Transcript, pp. 61-62; 100; Every six hours, the AMI reading device transmits the previous twelve hours of recorded hourly meter readings. Exhibit 200, Figueroa Rebuttal, p. 5. AMI is the name of the technology. It is implemented with a MTU, which is a device installed on the meter. Transcript, p. 76. It sits on the meter itself and transmits to a DCU [not defined], which is located elsewhere in the neighborhood. The DCU then transmits the data into MAWC's system. Transcript, p. 99.
[25] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2, FN 3
[26] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2, FN 3.
[27] Exhibit 100, Staff Report, Official Case File Memorandum, p. 1.
[28] Exhibit 100, Staff Report, Official Case File Memorandum, p. 1.
[29] Exhibit 100, Staff Report, Official Case File Memorandum.
[30] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.

11. Staff's calculations also show that during the five-year period from 2014 through the first half of 2018, the reported usage increased, with the quarterly averages by year being 50, 65, 77.75, 86.25, and 91 units respectively.[31] The usage over that five-year period equaled nearly 1,000 additional units of water above Ms. Beecham's current usage level.[32]

Ms. Beecham's Reported Water Usage Habits

12. Ms. Beecham's home has two full bathrooms.[33] Both have tubs and showers.[34] She has a dishwasher.[35] Ms. Beecham could not say how many times the children were flushing toilets per day, and noted that some of the children are infants and do not use the toilets.[36]

13. Although everyone uses water differently, the average person uses between 80 and 100 gallons per day.[37] Based on the average daily consumption per person, Ms. Beecham's reported usage of 104 units from the January 29, 2018 quarterly bill[38] is equivalent of 8.1 to 10.1 people living in the house consuming 80 to 100 gallons per person per day respectively. Ms. Beecham's billed usage of 26 units from the

[31] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.
[32] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.
[33] Transcript, pp. 34-35.
[34] Transcript p. 35.
[35] Transcript p. 35.
[36] Transcript, p. 44.
[37] Transcript, pp. 120 - 121. Testimony of MAWC witness, Tracie Figueroa. Her testimony was based upon Google. She testified that "[w]hen I talk to customers in my capacity, that's kind of what I relay is what the Google standard is what I call it." Transcript, p. 121.
[38] 104 units = 77,792 gallons over 96 days consumption between the October 25, 2017 and January 29, 2018 bills and a conversion rate of 1 unit = 748 gallons.

October 21, 2019 bill is equivalent to 2.1 to 2.7 people living in the house consuming 80 to 100 gallons per person per day respectively.[39]

14. The Commission finds that MAWC was notified of the billing issue no later than October 17, 2018, when its field representative met with Ms. Beecham to discuss water usage issues.[40]

15. MAWC sends out a high bill letter to customers when usage is two times higher than the usage for that period during the prior year.[41]

16. MAWC did not send out a high bill letter to Ms. Beecham in the 2014 to 2018 period because the continuous increases in usage did not ever equal two times the usage amount for any period in the prior year.[42]

A Leak

17. Ms. Beecham stated she had never heard nor seen water running in her home, had never called anyone to make repairs, and had never had leak repair work done.[43] If there was a leak, it is unlikely it would have been resolved without repair work's being conducted.[44] The main break reported on March 6, 2017, was not on Ms. Beecham's side of her water meter, and her meter did not record water lost in that break.[45]

[39] Calculation based on consumption over 90 days between the July 23, 2019 and October 21, 2019 bills and conversion of 1 unit = 748 gallons.
[40] Transcript, p. 93.
[41] Transcript, pgs. 116 and 123.
[42] Transcript, pgs. 116 and 123 - 124.
[43] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2; Transcript, p. 30. Without objection, Ms. Beecham filed "Additional Response to Complaint," Exhibit 2, with attached photographs which the exhibit states she believes show a leak in progress in front of her driveway basically where it was repaired in 2017. The exhibits states: "it does not seem to be affecting my water usage."
[44] Exhibit 100, Staff Report, Official Case File Memorandum, p. 3.
[45] Exhibit 200, Figueroa Rebuttal, p. 4.

18. Staff determined that Ms. Beecham's high reported usage could not be explained by running a daycare business[46] and as part of its investigation inspected her residence for signs of a water leak.[47] Staff found no evidence of a leak on Ms. Beecham's side of the meter during its investigations.[48]

Meter Reading

19. MAWC provides customer usage data to the Metropolitan St. Louis Sewer District (MSD), which provides Ms. Beecham her sewer service, and the sewer authority uses that data to bill the customer.[49]

20. In or around October of 2018, MSD informed Ms. Beecham that she was being billed for an extreme usage of water.[50] Using this information, Ms. Beecham contacted MAWC to dispute the billing.[51] MAWC then sent an employee, Jennifer, to Ms. Beecham's home, who advised her that she did not have a leak, there was no water running, and that MAWC had not been able to read meters for about a year.[52]

21. MAWC confirmed that its field representative, Jennifer, had met with Ms. Beecham on October 17, 2018.[53] Based on its records, MAWC could not answer whether Jennifer had told Ms. Beecham that her meter had not been read for a year.[54]

[46] Transcript, p. 72.
[47] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.
[48] Exhibit 100, Staff Report, Official Case File Memorandum, p. 2.
[49] Transcript, pp. 107-108.
[50] Transcript, p. 28 and 49.
[51] Transcript, p. 94.
[52] Transcript, pp. 48-49; and Exhibit 1, Complaint, paragraph 7.
[53] Transcript, p. 93.
[54] Transcript, pp. 105 and 106. However, MAWC witness Ms. Figueroa testified that based upon company records there was no period of a year when MAWC's meters were not read.

22. MAWC's evidence was that each bill for Ms. Beecham's water usage from October 27, 2014, through July 27, 2018, was based on an actual reading at the meter by a field service representative using a touchpad.[55]

23. The water meter is similar to a car's odometer.[56] To calculate a customer's usage for a period of time, the prior period's recorded meter reading is subtracted from the current recorded meter reading. If an error occurs at the end of one meter-reading period because of a mistaken reading, the usage will be trued-up and the error corrected when the meter is next correctly read.[57]

14. When the AMI technology was installed on December 8, 2017,[58] the physical meter and the AMI's MTU were calibrated together to ensure they reflected the same initial reading, but the accuracy of the underlying meter or meter reading was not tested.[59]

A Faulty Meter

24. Ms. Beecham's water meter was installed in 2007.[60] It is not scheduled for replacement until 2022.[61]

25. MAWC's policy was to inspect a meter only if MAWC's billing department detected a possible error[62] or a customer contacted MAWC about a high reading, a leak or something else that concerned the customer.[63]

[55] Exhibit 200, Figueroa Rebuttal, p. 5.
[56] Transcript, p. 89.
[57] Transcript, p. 89.
[58] Transcript, p. 95.
[59] Transcript, pp. 118-119.
[60] Transcript, p. 93.
[61] Transcript, p. 93.
[62] Transcript, p. 112.
[63] Transcript, pp. 113-114.

26. When MAWC's field representative met with Ms. Beecham about her high billing in October 2018, the field representative noted the water usage was decreasing and told Ms. Beecham that if she was still unhappy with her next bill that she could request a meter test.[64]MAWC did not test Ms. Beecham's meter at or near the time of this customer contact.[65]

27. MAWC has no record of work or repair on Ms. Beecham's water meter, either before or after the installation of the AMI technology in December of 2017.[66]

28. Staff did not request MAWC test Ms. Beecham's meter as part of its investigation of Ms. Beecham's complaint because as of December 2019, the filing of this complaint, Ms. Beecham's billing had returned to normal.[67]

Post Hearing Meter Test

29. In response to the Commission's September 16, 2020, Order Directing Filing, MAWC filed the Affidavit of Tracie Figueroa with attachments on September 25, 2020, stating that MAWC personnel bench tested the water meter at its facility on September 23, 2020.[68] The Affidavit stated the test was conducted in accordance with the industry standard water meter practice. The meter was tested at rates of flow over the meter's range of minimum to maximum flow. On the day of the bench test, the meter did not show an error in measurement in excess of five percent when registering water at stream flow equivalent to approximately one tenth and full

[64] Transcript, p. 133-134.
[65] Transcript, pp. 94, 74 and 80.
[66] Transcript, p. 75, 120.
[67] Staff's Initial Post-Hearing Brief, p. 9.
[68] Affidavit of Tracie Figueroa.

normal rating under the average service pressure. Other attachments to the Affidavit showed the general reliability of that type of meter.

Conclusions of Law

A. As a company owning, operating, controlling, or managing a plant or water supply for selling or supplying water for gain, MAWC is a public utility subject to the jurisdiction, control and regulation of the Commission.[69]

B. 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. . . ."Section 386.390, RSMo provides a complainant with an opportunity for a hearing. MAWC is a "water corporation" as defined by section 386.020(59), RSMo. The Commission exercises general supervision over water corporations pursuant to section 393.140(1), RSMo. Ms. Beecham has filed a complaint alleging that MAWC has committed acts or omitted to do acts in violation of the "safe and adequate" and "just and reasonable" service requirements of Section 393.130, RSMo. The Commission has jurisdiction in this case.

C. Commission 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.

[69] Section 386.020 (43) and (59), RSMo.

D. Missouri law provides that every water corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. It provides that all charges made or demanded by any such water corporation shall be just and reasonable and not more than allowed by law or by order or decision of the commission. It prohibits any unjust or unreasonable charge or one in excess of that allowed by law or by order or decision of the commission.[70]

E. Rule 20 CSR 4240.10.030 (37) states:

> No water service meter shall be allowed in service which has an incorrect gear ratio or dial train or is mechanically defective or shows an error in measurement in excess of five percent (5%) when registering water at stream flow equivalent to approximately one-tenth (1/10) and full normal rating under the average service pressure. . . [.] Tests for accuracy shall be made with a suitable testing device in accordance with the best modern water meter practice and at rates of flow which will properly reflect the accuracy of meters over each meter's range of minimum and maximum flow.

F. MAWC provides service to Ms. Beecham pursuant to its approved tariff, Tracking No. JW-2012-0085.[71] That tariff contains no specific provisions for leak adjustments.[72]

G. Ms. Beecham has the burden of proving that MAWC violated a law under the Commission's authority, a Commission rule, an order of the Commission or its tariff.[73]

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[70] Section 393.130.1, RSMo.
[71] Exhibit 200, Figueroa Rebuttal, p. 2.
[72] Exhibit 200, Figueroa Rebuttal, p. 2. Exhibit 200 states that "[a]s a customer courtesy, Missouri American's billing department uses the following leak adjustment guideline: 'One time per account. High bill must be two times higher than average. Adjust 50% of the overage on the maximum of two high bills.' The customer must provide documentation of the leak repair." Exhibit 200, p. 3. See also, Exhibit 100, Staff's Report, Official Case File Memorandum, page 3: "The Company stated it has not given the Complainant a leak adjustment in this instance, because she denies having a leak and because the Company does not consider Complainant's continued high usage over 26 billing periods unexplained."
[73] *State ex rel. GS Technologies Operating Co. v. PSC of Mo*., 116 S.W.3d 680, 693 (Mo. App. 2003).

H. The determination of witness credibility is left to the Commission, "which is free to believe none, part or all of the testimony."[74]

I. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. Thus, it has no authority to enter a money judgment. But it may order adjustments for an overcharge.[75]

J. Rule 20 CSR 4240-13.025 (1) provides, in part:

> For all billing errors, the utility will determine from all related and available information the probable period during which the condition causing the errors existed and shall make billing adjustments for that period as follows: (A) In the event of an overcharge, an adjustment shall be made for the entire period that the overcharge can be shown to have existed not to exceed sixty (60) consecutive monthly billing periods, or twenty (20) consecutive quarterly billing periods, calculated from the date of discovery, inquiry, or actual notification of the utility, whichever comes first.

Rule 20 CSR 4240-13.025(1) (E) states that "[n]o billing adjustment shall be made if, upon test, an error in measurement is found to be within the limits prescribed by the commission rules. . . ."

Decision

The determination of witness credibility is left to the Commission, "which is free to believe none, part or all of the testimony."[76] The Commission is free to believe Ms. Beecham, and based upon the entire record, the Commission finds her testimony

[74] *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).
[75] 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*., supra, at 696.Staff notes that "20 CSR 4240-13.024(1)(A) and MAWC's sheet number R36 address overcharges."
[76] *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).

convincing and credible that her actual water usage did not substantially change throughout the period in question and that she never had a leak on her side of the water meter. Ms. Beecham's testimony was based upon her own personal knowledge of the facts, and as a witness, she made a convincing impression. She testified in detail concerning her daycare business, the number and ages of the children she cared for, the meals and laundry she did for these children, the family members living with her at various times, her home and bathroom circumstances, her lack of a pool or lawn sprinkler system, and her laundry, cooking, and dish washing habits. She testified that nothing about these circumstances or activities ever changed.

The evidence presented in this case did not provide a definitive reason as to why Ms. Beecham's usage steadily increased from early 2012 through her January 2019 bill and then abruptly decreased following the installation of the AMI. MAWC's claim that its recorded usage at Ms. Beecham's residence was accurate is unconvincing. From April 29, 2014, through July 31, 2017, Ms. Beecham's reported usage increased incrementally from 43 to 90 units per quarter, reaching a peak of 104 units as reflected on her January 29, 2018 bill. Then her April 27, 2018 bill for the first full quarter after AMI was installed in December of 2017 showed a usage decrease. Thereafter, reported usage quickly and drastically decreased, rapidly settling down at its present average of about 27 units per quarter.

Although MAWC asserts Ms. Beecham's daycare business would account for the periods of high water usage, that argument is unpersuasive. It ignores the fact that Ms. Beecham's daycare business has continuously operated in the same fashion with approximately the same number of attendees since 2000. While Ms. Beecham's daycare

business averaged around six to eight children, she testified it never went above ten children. And even if it is assumed Ms. Beecham watched two or three additional children between the end of 2014 and 2018, this would not explain such a drastic increase in water usage. Ms. Beecham's quarterly bill of July 29, 2014, showed water usage of 43 units. That amounts to an average monthly usage of approximately 10,723 gallons. This usage level was consistent with quarterly bills prior to that date. In contrast, Ms. Beecham's highest quarterly bill in January 29, 2018, reported a usage of 104 units. That amounts to an average monthly usage of 25,930 gallons of water, which is almost two and a half times higher than the 2014 bill. Evidence showed an average person could use between 80 and 100 gallons of water a day. Even assuming that between 2014 and 2018, Ms. Beecham had four additional children in her daycare, watched them every day of the month, and they each used 100 gallons per day during the limited time they were at her home, water usage would still not reach the level billed for on January 29, 2018.

Further, while MAWC argued that the daycare business explained the increased water usage, the company failed to provide actual evidence showing what a reasonable level of water usage should be for a customer like Ms. Beecham. Even disregarding the company's want of evidence, the argument itself fails to explain how the daycare business caused a water usage high of 104 units a quarter in January 2018, but then a low water usage of 21 units per quarter a year later—when Ms. Beecham was operating the same daycare business in a consistent manner throughout the entire time period. Finally, Staff's expert witness, Mr. Spratt, testified that Ms. Beecham's high reported water usage could not be explained by her daycare business. In summary, MAWC's daycare argument, which rested on no evidence and failed to explain how Ms. Beecham's usage doubled

while her daycare business did not change, simply does not discredit Ms. Beecham's testimony about the facts.

Furthermore, MAWC's general position that the bills at issue show an accurate and reasonable level of usage is completely inconsistent with what MSD perceived as reasonable and reported as unreasonable to Ms. Beecham. MAWC's opinion on that score was not persuasive. That an employee with MSD was alarmed enough about the high water usage levels to advise Ms. Beecham that her water usage was extremely high and that she needed to contact MAWC, further supports the Commission's finding that Ms. Beecham's testimony regarding her usage history was more persuasive than MAWC's argument that the reported high usage was caused by the operation of the daycare. Finally, the Commission does not find Ms. Beecham less credible or persuasive due to the timing of her complaint, as different reasonable and credible people may react to the same bills differently and any relief granted to Ms. Beecham would be subject to the Commission's rules regarding the timing of her complaint.

Turning now to MAWC's September 23, 2020, water meter test: again, the Commission cannot find that this test discredits Ms. Beecham's testimony as to her actual water usage. The Commission notes that MAWC's September 23, 2020 water meter test was neither offered nor admitted as evidence during the hearing, and the Commission did not direct such a test be submitted after the hearing. The Commission's September 16, 2020, Order Directing Filing did not reopen the record to allow a new meter test to be conducted and introduced. The order's only purpose was to have MAWC "file

its records showing it either complied with or had a waiver from the requirements of Commission Rule 20 CSR 4240-10.030(3) with respect to Ms. Beecham's water meter."[77]

MAWC's Affidavit provided information purporting to justify MAWC's 15 year inspection meter testing program as being sufficient to satisfy the technical requirements of Commission Rule 20 CSR 4240-10.030(37).It did not, however, address the September 16 order's express requirement that MAWC show compliance with the 10-year inspection and testing requirements of 20 CSR 4240-10.030(38), nor did it indicate whether the Commission has granted MAWC a waiver from those requirements.[78] Taken together, the Commission's two orders, repeatedly directed at the question of MAWC's compliance with the ten-year rule and not to the allegations of Ms. Beecham's complaint, clearly did not invite MAWC to conduct a meter test and submit further evidence of that test as proof that could rebut Ms. Beecham's testimony about the events of 2014-2018 as reflected in Staff's graph.

Further, there are procedural problems associated with considering MAWC's September 23, 2020, meter test: Ms. Beecham submitted a timely response to the Affidavit, essentially objecting to the meter test because after she had asked to be present and to see and photograph the serial number on the meter when removed from the ground so as to ensure it was her actual meter (she had photographed the meter in the ground showing the identifying tag and the meter itself), the company did not comply with her request.[79]

[77] Order Directing Filing, September 16, 2020.
[78] Affidavit of Tracie Figueroa.
[79] Ms. Beecham's Rebuttal to the Procedures of the Testing of the Meter.

Turning to the weight to be accorded the September 23, 2020, meter test itself with respect to the allegations of Ms. Beecham's complaint: the test results simply do not discredit Ms. Beecham's testimony. The time period in question in this case was from 2014 into part of 2018.But MAWC did not test the meter in October 2018, when its investigator looked at the meter and talked with Ms. Beecham. Instead, its investigator told Ms. Beecham at that time that MAWC would test the meter after the next bill (October 2018) if she requested the test.By the time MAWC did test the meter in September 2020, after the hearing, the billing had been normal for over one year and 9 months. MAWC did not test this meter in preparation for the evidentiary hearing in this complaint or offer it as evidence to rebut Ms. Beecham's testimony at hearing. Finally, Staff also noted that it did not request testing of this meter due to the fact the billing had returned to normal when conducting its investigation. That neither MAWC nor Staff had the meter tested makes the point: a meter test occurring well after the reported problem disappeared would carry little weight over and against Ms. Beecham's testimony. The meter test merely goes to MAWC's compliance with the Commission Rule requiring periodic meter tests regardless of consumer complaints.

The timing of the meter test, long after Ms. Beecham's reported usage had returned to normal, does not persuade the Commission that Ms. Beecham's evidence of her consistent usage history was inaccurate. Finally, the changes that occurred in December of 2017 tended to weaken the nexus between a September 2020 test and Ms. Beecham's reported water usages between 2014 and the beginning of 2018.The meter was manually read by MAWC's meter reader with a touchpad until December 2017 when MAWC installed Advanced Metering Infrastructure (AMI) meter reading with an

MTU—a physical device—placed on the existing meter serving Ms. Beecham's home. Manual reading stopped in December 2017.The accuracy of the meter was not tested in December 2017, nor at any time during the period that high usage was being reported by the meter.

The limitation provided under Rule 20 CSR 4240-13.025(1)(E) states that "[n]o billing adjustment shall be made if, upon test, an error in measurement is found to be within the limits prescribed by the commission rules." However, this limit contemplates that a faulty meter be the probable sole cause of a billing error and, in any event, that there be a reasonable nexus between the "probable period during which the condition causing the errors existed"[80] and the meter test. The meter was not tested at or near the time of the alleged high usage. Neither MAWC nor Staff attempted to offer such a test as evidence to rebut Ms. Beecham's testimony of her actual water usage practices at the hearing. At the least, it would be disingenuous for MAWC to now argue that a meter test in September of 2020 is somehow so persuasive as to the accuracy of the meter readings and usage data from 2014 through 2018, as to undermine Ms. Beecham's credibility. The Commission has fully considered MAWC's September 23, 2020 meter test in reaching its decision. The Commission finds that the September 23, 2020 bench test of the meter is not probative evidence of whether or not a billing error occurred during "the probable period during which the condition causing the errors existed"**--** the time period relevant to the complaint.

[80] 20 CSR 4240-13.025 (1): "For all billing errors, the utility will determine from all related and available information the probable period during which the condition causing the errors existed and shall make billing adjustments for that period as follows. . . " (emphasis added).

It is the Commission's decision, accordingly, that Ms. Beecham met her burden to show that she was overcharged beginning in mid-2012 through her October 2018 quarterly bill. However, 20 CSR 4240-13.025 (1) limits any overcharge adjustments to the five-year period immediately preceding October 17, 2018, when the evidence indisputably shows all parties were on notice of the issue.

The record before the Commission contains the data necessary to calculate the difference between Ms. Beecham's average usage and her billed usage. From the quarterly billing ended April 18, 2019, to the Staff's review of the water bill issued prior to March 6, 2020, the date of Staff's report, Staff calculated her usage averaged 27 units per quarter. No party objected to the accuracy, relevance, or receipt in evidence of Staff's calculations. Per Rule 20 CSR 4240-13.025(1), the Commission will order MAWC, using 27 units per quarter as a base line of actual usage, to determine and make billing adjustments for an overcharge for the five-year period immediately preceding October 17, 2018.

Any party wishing to request a rehearing or reconsideration shall file applications for the requested relief prior to the effective date of this Amended Report and Order.

THE COMMISSION ORDERS THAT:

1. Linda Beecham's Complaint is sustained.

2. Using 27 units of water per quarter as a base line of Ms. Beecham's water usage, MAWC shall determine and make billing adjustments for an overcharge for the five-year period immediately preceding the quarterly billing ended October 17, 2018.

3. No later than May 28, 2021, MAWC shall file a statement of the amount to be credited to Ms. Beecham's account together with the supporting calculations. [81]

4. No later than May 28, 2021, or as soon thereafter as the credit has occurred, MAWC shall file notice of the date the credit has been made to Ms. Beecham's account.

5. Only information contained in the record that identifies Ms. Beecham's address, the name and address of her daycare business and the identity of her employees shall be considered confidential.

6. This Amended Report and Order shall become effective on May 28, 2021.

BY THE COMMISSION

Morris Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Graham, Regulatory Law Judge

[81] MAWC filed a Statement of Adjustment and Notice on February 26, 2021 with respect to the Report and Order of January 13, 2021.As that Report and Order, ordering those actions, has been withdrawn and there must be an existing executory order creating the obligations, this order restates them. MAWC may file an amended notice to comply with this Amended Report and Order.

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 Third Amendment to Territorial Agreement Concerning Territory in Franklin County, Missouri	))))))	**File No. WO-2021-0254**

REPORT AND ORDER APPROVING THIRD AMENDMENT TO TERRITORIAL AGREEMENT

CERTIFICATES

§55.2. Territorial agreements

Territorial agreements must be in writing pursuant to Section 247.172, RSMo (2016). Under the same statute, approvals of territorial agreements must be in the form of a Report and Order. The statute also provides that territorial agreements must not be detrimental to the public interest.

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

§2. Jurisdiction and powers

The Commission determined that the submitted application was mis-titled and corrected it on its own motion.

WATER

§11. Territorial agreements

Territorial agreements must be in writing pursuant to Section 247.172, RSMo (2016). Under the same statute, approvals of territorial agreements must be in the form of a Report and Order. The statute also provides that territorial agreements must not be detrimental to the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held by internet and audio conference on the 28th day of April, 2021.

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 Third Amendment to Territorial Agreement Concerning Territory in Franklin County, Missouri	))))))	**File No. WO-2021-0254**

REPORT AND ORDER APPROVING THIRD AMENDMENT TO TERRITORIAL AGREEMENT

Issue Date: April 28, 2021 Effective Date: May 28, 2021

This order approves the Third Amendment to the territorial agreement between the Public Water Supply District No. 1 of Franklin County, Missouri (the District) and the City of Union (the City) (collectively the "Joint Applicants").

Findings of Facts

1. The City is a fourth class city, organized and operating under Chapter 79 of the Revised Statutes of Missouri.[1] The City owns and operates a water utility in Franklin County, Missouri. The City is a political subdivision of the state of Missouri and is not subject to regulation by the Commission except for purposes of this file. 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. The District is a

[1] All citations to RSMo are to the 2016 edition.

political subdivision of the State of Missouri and is not subject to regulation by the Commission except for purposes of this application. The District's principal place of business is located at 3017 Highway A, Washington, Missouri 63090.

3. On March 6, 2003, in File No. WO-2003-0186, the Commission approved a territorial agreement between the City and the District. On December 7, 2006, the Commission approved the first amendment to the territorial agreement in the same file number. On April 8, 2020, the Commission approved the second amendment to the agreement in File No. WO-2020-0249. The present case began on February 9, 2021, when the Joint Applicants requested the Commission approve a third amendment to the territorial agreement, and attached to their application[2] the *Third Amendment and Addendum to Territorial Agreement* (Third Amendment).

4. On February 23, 2021, the Commission ordered that notice of the application be provided to potentially interested persons and established March 19, 2021, as the deadline for submission of requests to intervene. No requests to intervene were filed. The Commission also directed Staff to file a recommendation regarding the application no later than March 26, 2021. The Commission further directed that any party requesting a hearing do so by April 6, 2021. No requests for a hearing were filed.

5. On March 26, 2021, Staff filed a recommendation advising the Commission to approve the Third Amendment. No one has filed an objection, nor has anyone requested a hearing.

[2] The filing is titled *Second Addendum to Water Service Territorial Agreement.* As the attachment to the filing is titled *Third Amendment and Addendum to Territorial Agreement*, and the second amendment to this territorial agreement was approved in File No. WO-2020-0249, the Commission regards the application as mistitled. The Commission has corrected the error on its own motion.

6. The Third Amendment removes real property from the service area of the District. The property to be transferred is detailed in Exhibit A, attached to Joint Applicants' Third Amendment, which is in turn attached to this order. Exhibit B, similarly attached, describes the District's service territory as it will exist upon approval of the Third Amendment.

7. There are no customers currently receiving service from the District whose service will transfer to the City as the subject real property is undeveloped. In order to receive water service at the subject real property, the District would have to install new water facilities at considerable cost. The City, however, has nearby water facilities.

8. The Third Amendment provides for compensation to be paid by the City to the District in the amount of $7,800, upon approval of the Third Amendment by the Commission.

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. Section 247.172.5, (RSMo), 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.

Decision

The Commission finds that the parties have agreed to the Third Amendment and no person has objected nor requested a hearing. The Commission concludes the Third Amendment in total is not detrimental to the public interest and will be approved.

THE COMMISSION ORDERS THAT:

1. The Third Amendment to the territorial agreement between the City and the District is approved, and is included with this order as an attachment. The signatories are ordered to comply with the terms of the Third Amendment.

2. The City and the District are authorized to transfer the service area for the real property described in Exhibit A to the Third Amendment.

3. The District's service area shall be modified to be as listed in Exhibit B to the Third Amendment.

4. The City and the District 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 effect the terms and conditions of the Third Amendment and to implement the authority granted by the Commission in this order.

5. This order shall become effective on May 28, 2021.

6. This file shall be closed on May 29, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Constellation NewEnergy-Gas Division, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0315**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER DENYING MOTION TO DISMISS

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

Section 386.390(1), RSMo, gives the Commission jurisdiction to hear complaints about "any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or any order or decision of the commission."

§24. Procedures, evidence and proof

In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.

§24. Procedures, evidence and proof

A complaint alleging that a gas utility violated its tariff regarding the issuance of an operational flow order sufficiently stated a cause of action to bring the complaint within the jurisdiction of the Commission.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of May, 2021.

Constellation NewEnergy-Gas Division, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0315**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER DENYING MOTION TO DISMISS

Issue Date: May 26, 2021 Effective Date: May 26, 2021

Constellation NewEnergy – Gas Division, LLC (CNEG) filed a complaint against Spire Missouri, Inc. and its operating unit Spire Missouri West (Spire) on March 26, 2021. The complaint alleges that Spire has failed to comply with the requirements of its tariff in assessing approximately $35 million in operational flow order penalties following the February 2021 cold weather event. Spire filed a motion to dismiss the complaint along with its answer to the complaint on April 28, 2021. CNEG responded in opposition to the motion to dismiss on May 19, 2021.

Spire's motion to dismiss argues that CNEG has failed to allege facts in its complaint that would support a conclusion that Spire has violated its tariff by assessing Operational Flow Order penalties against CNEG. To the contrary, Spire argues that CNEG's complaint is that Spire has followed its tariff in assessing large penalties against CNEG arising from the events of February 2021 and refuses to waive the collection of those penalties. Spire

contends those concerns do not support a complaint against Spire under controlling statutes and the Commission's rules.

Spire's motion is a motion to dismiss the complaint for failure to state a cause of action. In ruling on that motion, the Commission merely considers the adequacy of the complaint.[1] It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.[2] Further, "[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition 'fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.'"[3] Section 386.390(1), RSMo (Supp. 2020), gives the Commission jurisdiction to hear complaints about:

> any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission; …

After examining CNEG's complaint in light of the guiding legal standard, the Commission finds that the complaint is sufficient to state a cause of action that can be addressed by the Commission. Specifically, the complaint alleges that Spire violated its tariff regarding the justification for issuance of operational flow orders, the notice provided to shippers about those operational flow orders, the duration of the operational flow orders,

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[1] *State ex rel. Laclede Gas Company v., Public Service Com'n of Missouri*, 392 S.W. 3d 24, 38 (Mo. App W.D. 2012).
[2] *Foremost Ins. Co. v. Public Service Com'n of Missouri,* 985 S.W. 2d 793, 796 (Mo. App. W.D. 1998).
[3] *State ex rel. Chicago B. & Q. R. Co. v. Public Service Commission,* 334 S.W.2d 54, 58 (Mo. 1960), quoting, *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission,* 308 Mo. 359, 372, 272 S.W. 957, 960 (Mo. 1925).

and calculation of the penalties it seeks to impose. The Commission cannot make any findings or reach any conclusions about the truth of those allegations at this time, but the allegations are sufficient to properly place this complaint within the Commission's jurisdiction.

Spire's motion to dismiss and CNEG's response also discuss whether the Commission has authority to order Spire to "waive" its claim to collect operational flow order penalties from CNEG and other shippers, and whether such a "waiver" would be appropriate. Those questions are about the remedy the Commission may impose if it finds that Spire has violated its tariff or other law or order. They may be addressed in the complaint, but they are not relevant to the question of whether CNEG's complaint states a cause of action against Spire.

The Commission finds that CNEG's complaint states a cause of action against Spire, and Spire's motion to dismiss will be denied.

THE COMMISSION ORDERS THAT:

1. Spire's Motion to Dismiss is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0316**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER DENYING MOTION TO DISMISS

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

Section 386.390(1), RSMo, gives the Commission jurisdiction to hear complaints about "any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or any order or decision of the commission."

§24. Procedures, evidence and proof

In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.

§24. Procedures, evidence and proof

A complaint alleging that a gas utility violated its tariff regarding the issuance of an operational flow order sufficiently stated a cause of action to bring the complaint within the jurisdiction of the Commission.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of May, 2021.

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0316**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	
	)	

ORDER DENYING MOTION TO DISMISS

Issue Date: May 26, 2021 Effective Date: May 26, 2021

Symmetry Energy Solutions, LLC (Symmetry) filed a complaint against Spire Missouri, Inc. and its operating unit Spire Missouri West (Spire) on March 26, 2021. The complaint alleges that Spire has failed to comply with the requirements of its tariff in assessing approximately $150 million in operational flow order penalties following the February 2021 cold weather event. Spire filed a motion to dismiss the complaint along with its answer to the complaint on April 28, 2021. Symmetry responded in opposition to the motion to dismiss on May 19, 2021.

Spire's motion to dismiss argues that Symmetry has failed to allege facts in its complaint that would support a conclusion that Spire has violated its tariff by assessing operational flow order penalties against Symmetry. To the contrary, Spire argues that Symmetry's complaint is that Spire has followed its tariff in assessing large penalties against Symmetry arising from the events of February 2021 and refuses to waive the

collection of those penalties. Spire contends those concerns do not support a complaint against Spire under controlling statutes and the Commission's rules.

Spire's motion is a motion to dismiss the complaint for failure to state a cause of action. In ruling on that motion, the Commission merely considers the adequacy of the complaint.[1] It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.[2] Further, "[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition 'fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.'"[3] Section 386.390(1), RSMo (Supp. 2020), gives the Commission jurisdiction to hear complaints about:

> any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission; …

After examining Symmetry's complaint in light of the guiding legal standard, the Commission finds that the complaint is sufficient to state a cause of action that can be addressed by the Commission. Specifically, the complaint alleges that Spire violated its tariff regarding the justification for issuance of operational flow orders, the notice provided to shippers about those operational flow orders, the duration of the operational flow orders,

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[1] *State ex rel. Laclede Gas Company v., Public Service Com'n of Missouri*, 392 S.W. 3d 24, 38 (Mo. App W.D. 2012).
[2] *Foremost Ins. Co. v. Public Service Com'n of Missouri,* 985 S.W. 2d 793, 796 (Mo. App. W.D. 1998).
[3] *State ex rel. Chicago B. & Q. R. Co. v. Public Service Commission,* 334 S.W.2d 54, 58 (Mo. 1960), quoting, *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission,* 308 Mo. 359, 372, 272 S.W. 957, 960 (Mo. 1925).

and calculation of the penalties it seeks to impose. The Commission cannot make any findings or reach any conclusions about the truth of those allegations at this time, but the allegations are sufficient to properly place this complaint within the Commission's jurisdiction.

Spire's motion to dismiss and Symmetry's response also discuss whether the Commission has authority to order Spire to "waive" its claim to collect operational flow order penalties from Symmetry and other shippers, and whether such a "waiver" would be appropriate. Those questions are about the remedy the Commission may impose if it finds that Spire has violated its tariff or other law or order. They may be addressed in the complaint, but they are not relevant to the question of whether Symmetry's complaint states a cause of action against Spire.

The Commission finds that Symmetry's complaint states a cause of action against Spire, and Spire's motion to dismiss will be denied.

THE COMMISSION ORDERS THAT:

1. Spire's Motion to Dismiss is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

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 and around the City of Taos, Missouri	)))))))	**File No. SA-2021-0120**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

The Commission uses five criteria, sometimes referred to as the "Tartan" factors, 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.

PUBLIC UTILITIES

§7. Jurisdiction and powers of the State Commission

The Commission found good cause exists for waiver of the Commission's 60-day prefiling notice rule, based on MAWC's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before MAWC filed its application.

SEWER

§2. Certificate of convenience and necessity

§7. Jurisdiction and powers of the State Commission

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

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 2nd day of June, 2021.

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 and around the City of Taos, Missouri	))))))	**File No. SA-2021-0120**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: June 2, 2021 Effective Date: July 2, 2021

On October 28, 2020, Missouri-American Water Company (MAWC) applied for a certificate of convenience and necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around the City of Taos, Missouri. MAWC proposes to acquire the sewer system operated by the City of Taos, Missouri (Taos System). MAWC also requests waiver of the 60-day notice requirement under 20 CSR 4240-4.017.

On April 12, 2021, the Staff of the Commission (Staff) recommended that the Commission grant MAWC a CCN subject to specified conditions. Staff filed an amended recommendation on May 13, 2021, after the Commission, at MAWC's request, extended the period for response to Staff's recommendation.

On May 20, 2021, MAWC filed a response to the amended recommendation and stated the company has "no objection" to the conditions and actions recommended by

Staff's amended filing.[1] No objections to Staff's amended recommendation have been received, and the time for responses has expired.[2] No requests to intervene in this case have been received.

MAWC is a water corporation, sewer corporation, and a public utility subject to Commission jurisdiction.[3] MAWC's application indicates the company provides water service to about 470,000 customers in Missouri, as well as sewer service to about 15,000 customers in Callaway, Jefferson, Pettis, Cole, Morgan, Platte, Taney, Stone, Christian, St. Louis, Clinton, Clay, Ray and Warren counties.

The Commission may grant a sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service."[4] The Commission uses five criteria, sometimes referred to as the "Tartan" factors, 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.[5]

Based on the verified pleadings and Staff's recommendation, the Commission finds MAWC's application for a CCN to provide sewer service satisfies the criteria and should be granted, subject to the conditions recommended by Staff. The need for service

[1] *Response to the Amended Staff Recommendation*, ¶ 2 (May 20, 2021).
[2] Commission Rule 20 CSR 4240-2.080(13) allows parties 10 days to respond to pleadings unless otherwise ordered by the Commission.
[3] Section 386.020(59), (49), (43), RSMo (Cum. Supp. 2020).
[4] Section 393.170, RSMo (Cum. Supp. 2020).
[5] *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).

is evident based on the sewer service now being provided by the City of Taos. As Staff recommends, MAWC's qualifications and financial ability are established by its operation of water and sewer systems in Missouri and its demonstrated access to financial resources. Although Staff reports MAWC's acquisition of the Taos System will not generate positive income immediately, Staff advises the impact to MAWC's ratepayers is likely to be negligible. The Commission finds MAWC's operation of the Taos System is economically feasible. Finally, given the affirmative findings on the first four criteria and Taos voters' approval of the sale to MAWC, the Commission finds MAWC's operation of the sewer system will promote the public interest.

No party has objected to issuance of a CCN, nor has any party objected to Staff's recommended conditions or requested a hearing.[6] The Commission will grant MAWC's application, subject to the conditions recommended by Staff.

Staff's amended recommendation updates Staff's calculation of net book value for the Taos System. Staff's initial recommendation concluded the proposed purchase price for the system exceeded Staff's calculation of net book value of the system.[7] Staff amended its recommendation after receiving additional information and documentation from MAWC regarding engineering costs.[8] Staff's amended recommendation concludes the proposed purchase price is below Staff's amended calculation of net book value as of December 31, 2020.[9]

[6] A requirement for a hearing is met when the opportunity for hearing is provided and a hearing is not requested by a proper party. *State ex rel. Rex Deffenderfer Enters., Inc. v. Pub. Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).
[7] *Staff Recommendation to Grant Certificate of Convenience and Necessity*, Appendix A: Staff's Memorandum, p. 4 (April 12, 2021).
[8] *Staff's Amended Recommendation to Grant Certificate of Convenience and Necessity*, ¶ 4 (May 13, 2021).
[9] *Staff's Amended Recommendation to Grant Certificate of Convenience and Necessity*, Appendix A: Revised Memorandum, p. 4 (May 13, 2021).

Staff's amended recommendation reports the City of Taos has not retained all of the records useful to determine net book value of system assets. Staff reports the city used Department of Natural Resources (DNR) grant funds to help finance a 2012 system replacement, so MAWC and Staff were able to recover some relevant documents from DNR by using record requests under Missouri's Sunshine Law.

Because Staff advises all documents useful in determining net book value of the Taos System may not be available and because some useful documents have been obtained from DNR, the Commission will direct Staff and MAWC to preserve all documents now in Staff's and MAWC's possession that relate to the net book value of the Taos System and retain such documents for use in MAWC's next rate case proceeding that includes the Taos System.

In addition, the Commission will grant MAWC'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 MAWC's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before MAWC filed its application.

THE COMMISSION ORDERS THAT:

1. MAWC is granted a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Taos, Missouri, in the area currently served by the City of Taos, Missouri, subject to the following conditions:

a. MAWC shall adopt the existing sewer rates for the City of Taos;

b. MAWC shall submit new and revised tariff sheets to take effect before closing on the Taos System, as provided by Staff's amended recommendation;

c. MAWC shall notify the Commission within five days of closing on the Taos System;

d. If closing on the Taos System does not occur within 30 days after the effective date of this order, MAWC shall file a report on the status of the transaction within five days after the initial 30-day period expires and shall file additional status reports within five days after each subsequent 30-day period, until closing takes place or until MAWC files a notice stating closing will not occur;

e. MAWC shall notify the Commission if MAWC determines it will not acquire the Taos System. In such instance, MAWC shall submit tariff sheets as appropriate and necessary to cancel service area maps, descriptions, rates and rules applicable to the Taos System;

f. MAWC shall use for the Taos System the depreciation rates required by the Commission in File No. WR-2020-0344;

g. MAWC shall keep its financial books and records for all utility capital related plant-in-service and operating expenses for the Taos System in accordance with Commission rules and the National Association of Regulatory Utility Commissioners Uniform System of Accounts;

h. MAWC shall train its call center personnel regarding rates and rules applicable to Taos System customers;

i. After closing, MAWC shall include the Taos System in MAWC's monthly customer service and billing reports to the Commission's Customer Experience Department;

j. Within 10 days after closing, MAWC shall provide to the Customer Experience Department an example of actual communication with Taos System customers regarding the acquisition and operation of the Taos System, including information about how customers may contact MAWC;

k. Within 30 days of closing, MAWC shall distribute to Taos System customers an informational brochure detailing the rights and responsibilities of the utility and customers regarding sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13;

l. Within 30 days after closing, MAWC shall provide to the Commission's Customer Experience Department a sample of 10 billing statements from MAWC's first month of billing for the Taos System; and

m. MAWC shall file notice when the requirements stated in items (h), (j), (k), and (l) are complete.

2. The Commission makes no finding that precludes the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

3. Staff and MAWC shall preserve all documents now in Staff's and MAWC's possession that relate to the net book value of the Taos System and shall retain such documents for use in MAWC's next rate case proceeding that includes the Taos System.

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

5. This order shall be effective on July 2, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of Osage Valley Electric Cooperative, Inc. and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Third Addendum to the Parties' Territorial Agreement Designating the Boundaries of Each Electric Service Supplier Within Portions of Cass County	)))))))	**File No. EO-2021-0339**

REPORT AND ORDER APPROVING THIRD ADDENDUM TO TERRITOTIAL AGREEMENT

ELECTRIC

§11. Territorial agreements

Pursuant to Subsections 394.312.3 and 5, RSMo, the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

The Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 9th day of June, 2021.

In the Matter of the Joint Motion of Osage Valley Electric Cooperative, Inc. and Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Third Addendum to the Parties' Territorial Agreement Designating the Boundaries of Each Electric Service Supplier Within Portions of Cass County	)))))))	**File No. EO-2021-0339**

REPORT AND ORDER APPROVING THIRD ADDENDUM TO TERRITORIAL AGREEMENT

Issue Date: June 9, 2021 Effective Date: July 9, 2021

This order approves a Third Addendum to a Territorial Agreement between Osage Valley Electric Cooperative (Osage Valley) and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy Missouri West) for an area comprised of 9.7 acres, now owned by Toy Lot, LLC, and located in Cass County, Missouri.

Procedural History

Osage Valley and Evergy Missouri West ("Joint Applicants") filed a Joint Motion for Approval of Third Addendum on April 9, 2021.[1] The Commission issued its Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation on April 9. The Joint Applicants filed a Joint Motion to Clarify on May 19, limiting the scope of the Third Addendum to 9.7 acres owned by Toy Lot, LLC. Commission Staff (Staff) filed its Staff Recommendation on May 28, recommending approval of the Third Addendum as limited by the Joint Motion to Clarify. No persons have sought intervention

[1] Unless otherwise indicated, date references will be to 2021.

or requested a hearing, nor have the Joint Applicants responded to Staff's Recommendation.

Findings of Fact

1. Osage Valley is a rural electric cooperative organized and existing under the laws of Missouri with its principal office in Butler, Missouri. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members within certain Missouri counties. Osage Valley is in good standing under the laws of the State of Missouri.

2. Evergy Missouri West is a Delaware corporation with its principal office and place of business in Kansas City, Missouri. Evergy Missouri West is primarily engaged in the business of providing electric and steam utility service in Missouri in its certificated areas. Evergy Missouri West is an electrical corporation and public utility as defined in Section 386.020, RSMo.[2]

3. The joint applicant's territorial agreement was first approved in a Report and Order dated September 30, 2004 in EO-2004-0603. That territorial agreement made Osage Valley the exclusive electric service provider, as between Osage Valley and Evergy Missouri West, to three specific parcels, each of which lies in Cass County, Missouri. Subsequently to the approval of the territorial agreement, there have been two further addenda, Addendum No. 1, being approved in EO-2005-0448; and Addendum No. 2, being approved in EO-2006-0244. The stated rationale for the territorial agreement and both subsequent addenda was the excessive cost of extending Evergy's Missouri West's facilities to service the associated properties.

[2] All references to the Missouri Revised Statutes will be to 2016.

4. The Third Addendum's area of focus is a parcel of land located in Cass County, Missouri, consisting of approximately 9.7 acres and owned by Toy Lot LLC. The Joint Motion, as limited by the Joint Applicants' clarification, asks that Osage Valley be the exclusive provider of electric service for this parcel of land. Toy Lot, LLC, owner of the 9.7 acres, has consented to the Joint Motion, and the signed consent is attached to the Joint Motion to Clarify.

5. The substantial reason for the Third Addendum is that Osage Valley has facilities that are routed along the boundary of the 9.7 acre parcel that also borders an interstate highway. Evergy Missouri West's nearest facilities are 1.5 miles to the west of the parcel. Therefore, in order to make the most efficient use of existing facilities and prevent a duplication of facilities, the Joint Applicants have sought to have Osage Valley be the exclusive electric service provider for the 9.7 acre parcel.

Conclusions of Law

A. Evergy Missouri West is a Delaware corporation providing electric and steam services.[3] As such, it is subject to the jurisdiction of the Commission per Chapters 386 and 393, RSMo.

B. Osage Valley is a rural electric cooperative organized under Chapter 394 RSMo, to provide electric service to its members in Missouri.

C. Section 394.312, RSMo 2016, gives the Commission jurisdiction over the territorial agreement. Although the Commission has limited jurisdiction over rural electrical cooperatives, because the Commission has jurisdiction over all territorial agreements, Osage Valley is subject to the Commission's jurisdiction in this case.[4]

[3] Section 386.020 (15) and (20), RSMo 2016.
[4] Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements,

D. Pursuant to subsections 394.312.3 and 5, RSMo, the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

E. Section 394.312.5, RSMo 2016, provides that the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

Decision

The owner of the affected area has consented to the Third Addendum as limited by the parties' Joint Motion to Clarify. Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.[5] Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission now determines that all material facts are in accordance with its decision.

The Commission determines the Third Addendum to the Territorial Agreement is in the public interest and not detrimental to the public interest in that while Evergy's nearest facilities are 1.5 miles to the west of the 9.7 acre parcel, Osage Valley has facilities that are routed along the boundary of the 9.7 acre parcel that also borders an interstate highway; and, thus, the Third Addendum, as limited by the parties' joint clarification, makes the most efficient use of existing facilities and prevents an otherwise duplication of facilities.

or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

[5] *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).

It is the Commission's decision that the Third Addendum the Parties' Territorial Agreement is in the public interest and as a whole is not detrimental to the public interest. The Commission will approve the Third Addendum. The Commission will order Evergy Missouri West to file revised tariff sheets to reflect the change in its approved service territory, setting out the legal description for all parcels associated with the Territorial Agreement.

THE COMMISSION ORDERS THAT:

1. The Third Addendum to the Parties' Territorial Agreement, as limited by the Joint Applicants' Joint Motion to Clarify filed on May 19, 2021, is approved.

2. Evergy Missouri West and Osage Valley are authorized to perform the Third Addendum to the Parties' Territorial Agreement and all acts and things necessary to performance.

3. Evergy Missouri West shall file revised tariff sheets to reflect the change in its approved service territory no later than thirty days after the effective date of this order. The revised tariff sheets shall reflect the metes and bounds description for all parcels associated with the Territorial Agreement and the associated Addenda as described in the body of this order.

4. This order shall be effective on July 9, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2021	))))	**File No. AO-2021-0419**

ASSESSMENT ORDER FOR FISCAL YEAR 2022

PUBLIC UTILITIES

§1. Generally

The Commission established the assessment amount for fiscal year 2022.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its Office in Jefferson City, Missouri on the 21st day of June, 2021.

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, 2021	))))	**File No. AO-2021-0419**

ASSESSMENT ORDER FOR FISCAL YEAR 2022

Issue Date: June 21, 2021 Effective Date: July 1, 2021

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year commencing July 1, 2021. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo and amount to $22,282,476. 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 $11,779,113. 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 $10,503,363.

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, 2021, is estimated to be $3,847,017. The Commission deducts these amounts and estimates its Fiscal Year 2022 Assessment to be $17,835,459. 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 2020, as provided by law. The reimbursement from the federal gas safety program is deducted from the estimated expenses attributed to the gas utility group.

The Commission allocates to each utility group its directly attributable estimated expenses. Additional common, administrative and other costs not directly attributable to any particular utility group are assessed according to the group's proportion of the total gross intrastate operating revenue of all utilities groups. Those amounts are set out with more specificity in documents located on the Commission’s web page at http://www.psc.mo.gov.

The Commission fixes the amount so allocated to each such group of public utilities, net of said estimated unexpended fund balance and federal reimbursement as follows:

Electric	$ 8,860,476
Gas	$ 4,329,869
Steam/Heating	$ 62,592
Water & Sewer	$ 3,444,982
Telephone	$ 1,137,540
Total	$ 17,835,459

The Commission allocates a proportionate share of the $17,835,459 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, 2021. The assessment shall be due and payable on or before July 15, 2021, or at the option of each public utility, it may be paid in equal quarterly installments on or before July 15, 2021, October 15, 2021, January 15, 2022, and April 15, 2022. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue for deposit.

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

So this order can be effective at the start of the 2022 fiscal year, it will be made effective in less than thirty days.

THE COMMISSION ORDERS THAT:

1. The assessment for fiscal year 2022 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, 2021.

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 for deposit.

6. This order shall become effective on July 1, 2021.

BY THE COMMISSION

Morris Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the First Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 3 Energy Efficiency Programs and Cycle 2 Long-Lead Projects of Union Electric Company d/b/a Ameren Missouri	)))))	**File No. EO-2021-0157**

ORDER APPROVING STIPULATION AND AGREEMENT

PUBLIC UTILITIES

§7. Jurisdiction and powers of the State Commission

Commission Rule 20 CSR 4240-2.115(1) provides that the Commission may accept a stipulation and agreement as a resolution of all the issues.

§7. Jurisdiction and powers of the State Commission

Where the Office of the Public Counsel did not join the agreement and did not file an objection within the period provided by the Commission's rule, the Commission may treat the agreement reached by Ameren Missouri and Staff as a unanimous agreement.

RATES

§20. Costs and expenses

The Commission approved a stipulation and agreement that provided a credit adjustment to the company's Energy Efficiency Investment Rate (EEIR) to refund certain costs related to promotional expenses.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its Office in Jefferson City, Missouri on the 8th day of July, 2021.

In the Matter of the First Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 3 Energy Efficiency Programs and Cycle 2 Long-Lead Projects of Union Electric Company d/b/a Ameren Missouri	)))))	**File No. EO-2021-0157**

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: July 8, 2021 Effective Date: August 7, 2021

On December 3, 2020, the Staff of the Commission (Staff) filed notice of its first prudence review of Union Electric Company d/b/a Ameren Missouri's costs associated with Demand-Side Programs Investment Mechanisms for Cycle 3 Energy Efficiency Programs and Cycle 2 Long-Lead Projects. In its report filed on May 3, 2021, Staff identified and recommended disallowance of certain costs and also recommended carryover of an adjustment, plus interest, from a previous Missouri Energy Efficiency Investment Act (MEEIA) prudence review. Ameren Missouri requested a hearing. After settlement discussions, Ameren Missouri and Staff on June 25, 2021, filed a stipulation and agreement settling all outstanding issues.

Staff and Ameren Missouri agree that Ameren Missouri will include a $153,732.06 credit to customers as part of an "Ordered Adjustment" in the "Net Ordered Adjustment" component of its Energy Efficiency Investment Rate (EEIR) calculation. The amount constitutes half of $303,877.50 in St. Louis Cardinals sponsorship costs during the relevant period, plus $1,793.31 in interest. Staff and Ameren Missouri reached this

compromise to settle Staff's recommendation that the Commission disallow costs related to Busch Stadium signage.

The parties also agree Ameren Missouri's costs related to Busch Stadium signage, beginning on January 1, 2021, may be considered for recovery through Ameren Missouri's EEIR so long as the signage substantially remains in the form depicted in Figure 1 of the agreement. Under the agreement, half of the signage cost is attributed to Ameren Missouri and only those costs are eligible to be considered for recovery through Ameren Missouri's EEIR. The parties agree the "level of such costs" remains subject to prudence review in future proceedings.

In addition, the parties agree Ameren Missouri's next Rider Energy Efficiency Investment Charge (EEIC) filing to adjust its EEIR will include, as an "Ordered Adjustment" in the "Net Ordered Adjustment" component of the calculation, a $50,000 credit to customers, plus interest. The credit resulted from settlement of a MEEIA prudence review in File No. EO-2019-0376, and the parties agree Ameren Missouri inadvertently omitted the credit in its EEIR adjustment filing.

Commission Rule 20 CSR 4240-2.115(1) provides that the Commission may accept a stipulation and agreement as a resolution of all the issues. The Office of the Public Counsel did not join the agreement and did not file an objection within the period provided by the Commission's rule. Thus, the Commission may treat the agreement reached by Ameren Missouri and Staff as a unanimous agreement.[1]

[1] Commission Rule 20 CSR 4240-2.115(2).

THE COMMISSION ORDERS THAT:

1. The stipulation and agreement filed on June 25, 2021, is approved. The parties are ordered to comply with the terms of the agreement. A copy of the stipulation and agreement is attached to this order.

2. This order shall be effective on August 7, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Jacobs, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the First Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 3 Energy Efficiency Programs and Cycle 2 Long-Lead Projects of Union Electric Company d/b/a Ameren Missouri.	))))))	File No. EO-2021-0157

STIPULATION AND AGREEMENT
REGARDING ADJUSTMENTS TO AMEREN MISSOURI'S EEIR

COME NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "the Company") and the Staff of the Missouri Public Service Commission ("Staff"), (collectively "Signatories"), and present to the Missouri Public Service Commission ("Commission") for approval this Stipulation and Agreement ("*Stipulation and Agreement*") commemorating an agreement between the Signatories resolving the issues in this case. In support of this *Stipulation and Agreement*, the Signatories respectfully state as follows:

BACKGROUND

1. On December 3, 2020, the Commission's Staff issued a pleading titled *Staff's Notice of Start of First MEEIA[1] Prudence Review of Cycle 3 Energy Efficiency Programs and Cycle 2 Long-Lead Projects* ("*Notice*"). 20 CSR 4240-20.093(11)(B) requires Staff to submit a recommendation regarding its prudence review not later than 150 days after the initiation of the prudence audit. Accordingly, on May 3, 2021, Staff submitted a report titled *Staff Report of First Prudence Review for Cycle 3 of Costs Related to the Demand-Side Programs Investment Mechanism and Cycle 2 Long-Lead Projects for the Electric Operations of Union Electric*

[1] Missouri Energy Efficiency Investment Act.

Company d/b/a Ameren Missouri ("*Report*"). Because it questioned a component of Staff's recommendation, Ameren Missouri submitted a *Request for Hearing* on May 10, 2021.

2. Since that time, Ameren Missouri and Staff continued discussions in an effort to resolve this matter without going to hearing. As a result of these discussions, Ameren Missouri and Staff have agreed to a compromise position regarding the amount of adjustment to be made to Ameren Missouri's Energy Efficiency Investment Rate ("EEIR"). The Signatories agree that resolution of the adjustment ordered to the EEIR is fair and, along with the other agreements set forth herein, will resolve the outstanding issues between them in this docket.

SPECIFIC TERMS AND CONDITIONS

3. Sponsorship Disallowance. In light of the foregoing, the Signatories to this *Stipulation and Agreement* agree that, in its next Rider EEIC filing to adjust its EEIR, Ameren Missouri shall include a $153,732.06 credit to customers as part of an "Ordered Adjustment" in the "Net Ordered Adjustment" component of its EEIR calculation. The $153,732.06 amount represents half of the Cardinals sponsorship costs during the relevant period plus $1,793.31 in interest (Original Cost $303,877.50/2 = $151,938.75 + $1,793.31 = $153,732.06).[2] This amount reflects a compromise between the Signatories regarding the disallowance of certain costs deemed "sponsorship costs" in the Staff *Report* related to signage at Busch Stadium. The Signatories further agree that Ameren Missouri's allocated costs[3] related to the Busch Stadium signage, from January 1, 2021 forward, may be considered for recovery through Ameren Missouri's EEIR so

[2] This amount reflects a reduced sponsorship cost for 2020 because of pandemic impacts.

[3] Currently, Ameren Missouri and Ameren Illinois are each allocated half of the cost of the sign, excluding giveaways and tickets that are allocated to Ameren Missouri Communications. From January 1, 2021 forward, only half of the cost of the sign will be allocated to Ameren Missouri and the face value of the giveaways and all-inclusive tickets will be allocated to Ameren Missouri Communications as "below the line" costs.

long as the Busch Stadium signage remains in substantially the same form as Figure 1 below, and that the sign below and its message are a qualifying EEIR cost.[4] However, the level of such costs will still be subject to prudence reviews in future proceedings pursuant to 20 CSR 4240-20.093. The parties further agree that once this adjustment is made, no other adjustments to the EEIR will be necessary for the MEEIA review period of March 1, 2019, through September 30, 2020.

Figure 1 – Busch Stadium Signage

4. Prior Settlement. In its last Rider EEIC filing to adjust its EEIR, Ameren Missouri inadvertently omitted the $50,000 credit to customers negotiated in settlement of the prior MEEIA prudence review proceeding in File No. EO-2019-0376. Ameren Missouri will include the $50,000, plus interest,[5] in its next Rider EEIC filing to adjust its EEIR, as part of an "Ordered Adjustment" in the "Net Ordered Adjustment" component of its EEIR calculation

5. Implementation. The Signatories agree that Commission approval of this *Stipulation and Agreement* will allow Ameren Missouri to implement a total "Ordered

[4] Ameren Missouri will not recover costs related to modifying the sign.

[5] Ameren Missouri will calculate the interest on the $50,000 from the Ordered Adjustment in File No. EO-2019-0376 since interest will need to be calculated up through the next Rider EEIC filing.

Adjustment" in its next Rider EEIC filing of $203,732.06, ($153,732.06 + $50,000 = $203,732.06) plus interest on the $50,000 from the Ordered Adjustment in File No. EO-2019-0376, reflecting the settled amounts described in Paragraphs 3 and 4 above in its next Rider EEIC filing.

GENERAL PROVISIONS

6. This *Stipulation and Agreement* is being entered into solely for the purpose of settling the issues specifically set forth above, and represents a settlement on a mutually-agreeable outcome without resolution of specific issues of law or fact. This *Stipulation and Agreement* is intended to relate *only* to the specific matters referred to herein; no Signatory waives any claim or right which it may otherwise have with respect to any matter not expressly provided for herein. No Signatory will be deemed to have approved, accepted, agreed, consented, or acquiesced to any substantive or procedural principle, treatment, calculation, or other determinative issue underlying the provisions of this *Stipulation and Agreement*. Except as specifically provided herein, no Signatory shall be prejudiced or bound in any manner by the terms of this *Stipulation and Agreement* in any other proceeding, regardless of whether this *Stipulation and Agreement* is approved.

7. This *Stipulation and Agreement* has resulted from extensive negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not approve this *Stipulation and Agreement,* or approves it with modifications or conditions to which a Signatory objects, then this *Stipulation and Agreement* shall be null and void, and no Signatory shall be bound by any of its provisions.

8. If the Commission does not approve this *Stipulation and Agreement* unconditionally and without modification, and notwithstanding its provision that it shall become void, neither this *Stipulation and Agreement*, nor any matters associated with its consideration by

the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.090 RSMo 2016 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this *Stipulation and Agreement* had not been presented for approval, and any suggestions or memoranda, testimony, or exhibits that have been offered or received in support of this *Stipulation and Agreement* shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

9. If the Commission unconditionally accepts the specific terms of this *Stipulation and Agreement* without modification, the Signatories waive, with respect only to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2016; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2016; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2016; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2016; and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2020. These waivers apply only to a Commission order respecting this *Stipulation and Agreement* issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this *Stipulation and Agreement*.

10. The Staff and Ameren Missouri shall also have the right to provide, at any agenda meeting at which this *Stipulation and Agreement* is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff and Ameren shall, to the extent reasonably practicable, provide the other parties with advance notice of the agenda meeting

for which the response is requested. Staff's and Ameren Missouri's oral explanations shall be subject to public disclosure, except to the extent they refer to matters that are privileged or protected from disclosure pursuant to the Commission's rules on confidential information.

11. This *Stipulation and Agreement* contains the entire agreement of the Signatories concerning the issues addressed herein.

12. This *Stipulation and Agreement* does not constitute a contract with the Commission and is not intended to impinge upon any Commission claim, right, or argument by virtue of the *Stipulation and Agreement*'s approval. Acceptance of this *Stipulation and Agreement* by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has or as an acquiescence of any underlying issue. Thus, nothing in this *Stipulation and Agreement* is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

13. The Signatories agree that this *Stipulation and Agreement*, except as specifically noted herein, resolves all issues related to these topics, and that this *Stipulation and Agreement* should be received into the record without the necessity of any witness taking the stand for examination.

WHEREFORE, the Signatories respectfully request that the Commission approve this *Stipulation and Agreement*, so that Ameren Missouri may move forward on these provisions, and grant any other and further relief as it deems just and equitable.

Respectfully submitted,

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Attorney for the Staff of the Missouri Public Service Commission

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 25th day of June, 2021, to counsel for all parties on the Commission's service list in this case.

/s/ Paula N. Johnson

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of its Surge Protection Program	)))	**File No. ET-2021-0082**

REPORT AND ORDER

ELECTRIC

§31. Equipment

Surge protection devices are electric plant. These devices are to be used in connection with the distribution, sale or furnishing of electricity. The Commission is not permitted to graft policy reasons, however sound, onto the plain meaning of the controlling statue.

SERVICE

§46. Connections, instruments and equipment in general

The Commission rejected an optional surge protection program proposed by the electric utility that would have required customers to deal with a third-party device manufacturer that the Commission does not regulate.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of its Surge Protection Program	**File No. ET-2021-0082** Tariff No. YE-2021-0081

REPORT AND ORDER

Issue Date: July 28, 2021

Effective Date: August 27, 2021

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of its Surge Protection Program	**File No. ET-2021-0082** Tariff No. YE-2021-0081

REPORT AND ORDER

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APPEARANCES

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

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Eric Kendall Banks, Banks Law LLC, 1824 Chouteau Avenue, St. Louis, Missouri 63103

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Whitney Payne, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

OFFICE OF THE PUBLIC COUNSEL:

Nathan Williams, Chief Deputy Public Counsel, PO Box 2230, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Ronald D. Pridgin

REPORT AND ORDER

I. Procedural History

A. Tariff Filings, Notice, and Intervention

On September 21, 2020, Union Electric Company d/b/a Ameren Missouri filed tariff sheets designed to implement a surge protection program. The tariff sheets, denominated Tariff No. YE-2021-0081 by the Commission, bore an effective date of December 20, 2020. Ameren Missouri extended the effective date of the tariff to July 31, 2021. The Commission then suspended the tariff until September 30, 2021.

The Commission issued an order and notice on September 22, 2020. The Commission received no intervention requests.

B. Evidentiary Hearing

The evidentiary hearing was held on April 13, 2021. Due to the COVID-19 pandemic, the hearing was convened via WebEx. During the hearing, the Commission admitted the testimony of nine witnesses, and received 17 exhibits into evidence. Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on May 25, 2021, and the case was deemed submitted for the Commission's decision on that date.[1]

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

II. General Matters

A. General Findings of Fact

1. Ameren Missouri is a public utility and an electrical corporation in Missouri.[2]

2. The Office of the Public Counsel ("OPC") is a party to this case pursuant to Section 386.710(2), RSMo[3], and by Commission Rule 20 CSR 4240-2.010(10).

3. The Staff of the Missouri Public Service Commission ("Staff") is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

4. The Commission finds that any given witness' qualifications and overall credibility are not dispositive as to each and every portion of that witness' testimony. The Commission gives each item or portion of a witness' testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.[4]

5. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.[5]

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[2] *Application*, p. 1 (filed September 21, 2020).
[3] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[4] 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).
[5] 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).

III. Disputed Issues[6]

I. May Ameren Missouri lawfully offer its proposed surge protection program as a regulated program?

Findings of Fact

6. A surge is a transient wave of voltage or current in an electric circuit typically lasting less than a few milliseconds.[7]

7. The surge protection device Ameren Missouri proposes to use is designed to protect electrical devices from voltage surges and spikes. The device provides this protection by limiting voltage surges that occur in the normal electrical system as power is supplied to an electronic device.[8]

8. If a customer wants to participate in the surge protection program, an installer will install a surge protection device within the meter box on the base of the electric meter.[9]

9. The device is designed to protect covered home appliances from surges that pass through the meter. Should the device fail, the manufacturer's limited warranty is designed to provide compensation.[10]

10. Surge protection devices such as the one Ameren Missouri offers in this case are used in connection with the furnishing of electricity. If Ameren Missouri weren't providing electricity, then the surge protection device would have no use.[11]

[6] Because the Commission has decided to reject Ameren Missouri's program, the Commission need not address Issues III and following. Those issues were whether the Commission should impose certain conditions on the program if the Commission approved it.
[7] Ex. 3, p. 2.
[8] Ex 3, p. 3.
[9] Ex. 3, p. 7.
[10] Ex. 3, p. 7; Ex. 4, p. 10; Tr. 111.
[11] Ex. 1, pp. 4-5.

11. The warranty provides coverage for 15 years, of up to $5,000 per appliance, $5,000 per occurrence, and $50,000 in the aggregate. The warranty would cover motor-driven equipment such as HVAC units, refrigerators, washers and dryers, dishwashers, freezers, fans, and cooking appliances.[12]

Conclusions of Law

Electric plant includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.[13]

Decision

The surge protection devices that Ameren Missouri wishes to provide are electric plant. These devices are to be used in connection with the distribution, sale or furnishing of electricity. Staff and OPC have presented policy reasons for the Commission to find that these devices are not plant. However, the Commission is not permitted to graft policy reasons, however sound, onto the plain meaning of the controlling statue.[14]

Furthermore, the Commission is aware other regulated utilities may be offering similar programs that are unregulated. The Commission will open a new file, and order

[12] Ex. 3, p. 7.
[13] Section 386.020(14) RSMo.
[14] *In the Matter of KCP&L's Request for Authority to Implement a General Rate Increase for Electric Service v. Mo. Public Serv. Comm'n*, 557 S.W.3d 460, 472 (Mo. App. 2018).

its Staff to report to the Commission its understanding of unregulated surge protection programs that regulated utilities are offering.

II. If it is lawful, should the Commission approve an Ameren Missouri surge protection program and treat the revenue, expense and investment associated with it as a regulated activity?

Findings of Fact

12. The surge protection program is not needed because Ameren Missouri is already providing safe, reliable, and adequate electrical service.[15]

13. The proposed surge protection program is potentially misleading to customers because it only includes motor-driven household equipment.[16] Non motor-driven equipment, such as electronics, would not be covered.[17]

14. If allowed into rate base, the surge protection devices would likely need to stay in rate base for 15 years.[18]

15. Alternatively, customers have several options to purchase their own surge protection devices.[19]

16. These competitive surge protection devices would provide a similar level of protection as the devices proposed by Ameren Missouri in this case.[20]

[15] Ex. 3, pp. 2-3; Ex. 9, p. 3.
[16] Ex. 7, p. 2.
[17] Ex, 7, pp. 3-4; Tr, 105.
[18] Tr. 120-121
[19] Ex. 7, pp. 5-6.
[20] Ex. 9, p. 3; Ex. 13, p. 26.

17. While Ameren Missouri seeks to have its surge protection program regulated by the Commission, Ameren Missouri also attempts to insulate itself from any meaningful regulation by claiming the device manufacturer is entirely responsible for handling device failures and warranty claims.[21]

18. The surge protection program appears to require that a customer prove that the device was working before the customer can make a claim under the warranty.[22]

19. Ameren Missouri's cost/benefit analysis of the surge protection program is unreliable.[23]

20. The surge protection program would charge a perpetual monthly fee of $9.95. This charge would shift the risk of low and short-term participation to non-participating ratepayers.[24]

21. The design of the surge protection program shifts the risk of low participation and short-term participation to non-participating ratepayers.[25]

22. The surge protection program would not have a cost-based rate. If a customer stayed in the surge protection program for the full 15-year life, then that customer would spend $1,800 for what Ameren Missouri prices as an approximately $70 device.[26]

Conclusions of Law

No additional Conclusions of Law are needed.

[21] Tr. 27.
[22] Tr. 80.
[23] Ex. 13, pp. 20-25.
[24] Ex. 13, pp, 12ff.
[25] Ex. 13, pp. 12, 19.
[26] Tr. 33.

Decision

The Commission will not approve the surge protection program. The program is flawed in that customers using the program would be dealing with a third-party device manufacturer that the Commission does not regulate. The Commission cannot protect customers against that third-party's actions.

Also, any customer education Ameren Missouri provides should cover what is covered, but also explicitly warn customers what is not covered. For example, the pending program would not cover non motor-driven equipment, such as televisions, computers, electronic gaming systems, smart devices, etc.

However, the Commission would consider a pilot program that remedies these issues. If the pilot program established that Ameren Missouri, and not a third-party provider, would guarantee the device, with only subscribers paying that cost, then the Commission would consider such a program. Such a program should also give clear notice to customers of all items not covered by a warranty.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri's proposed surge protection program is rejected.

2. The tariff sheets submitted on September 21, 2020, bearing Tariff No. YE-2021-0081 are rejected.

3. This Report and Order shall become effective on August 27, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).
Rupp, C., dissents.

Pridgin, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Amendment of the Regulations of the Manufactured Housing Program of the Missouri Public Service Commission	))))	**File No. MX-2022-0012**

FINDING OF NECESSITY AND ORDER DIRECTING THAT PROPOSED RULE AMENDMENTS AND RESCISSION BE FILED FOR PUBLICATION

MANUFACTURED HOUSING

§4. Jurisdiction and powers of the State Commission

The Commission found that a rulemaking was appropriate to increase fees charged by the Manufactured Housing Program to keep that program on an adequate financial footing.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 28th day of July, 2021.

In the Matter of the Amendment of the Regulations of the Manufactured Housing Program of the Missouri Public Service Commission	))))	**File No. MX-2022-0012**

FINDING OF NECESSITY AND ORDER DIRECTING THAT PROPOSED RULE AMENDMENTS AND RESCISSION BE FILED FOR PUBLICATION

Issue Date: July 28, 2021 Effective Date: July 28, 2021

The Commission has undertaken this rulemaking to amend several of its rules regarding regulation of manufactured housing. The amendments will increase the fees charged by the Manufactured Housing Program to keep that program on an adequate financial footing. The Commission has also decided to rescind the provision of those rules that allows for the issuance of a limited use installer license, as such limited use licenses have not been requested or issued in the past. The Commission finds that the amendments and the rescission are appropriate and necessary to protect the public interest and to carry out the purposes of the statute that granted the Commission authority to regulate in this area.

The Commission has discussed these amendments and rescission with interested stakeholders and will seek further comments during the rulemaking process.

THE COMMISSION ORDERS THAT:

1. The Secretary of the Commission shall file the amendments and rescission with the Secretary of State for publication in the Missouri Register as proposed amendments and rescission.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs, Complainants,	)	
v.	)	**File No. EC-2021-0059**
Grain Belt Express, LLC, and Invenergy Transmission, LLC, Respondents.	)	

REPORT AND ORDER

CERTIFICATES

§11. When a certificate is required generally

The Commission determined that Complainants failed to provide any instance of Grain Belt currently building anything that would require additional authorization.

§51. Modification and amendment of certificate generally

The Commission opined that if Grain Belt were to take action outside the design and engineering authority granted by the certificate of convenience and necessity (CCN) it could be found in violation of a condition that it seek approval of any design and engineering that is materially different from what was presented in its CCN Application. The CCN Order does not provide any time limitation to seek the necessary authority to implement any materially different design and engineering changes, but any request for authority would need to be approved prior to the implementation of any material design and engineering changes.

§61. Acts or omissions justifying revocation or forfeiture

Section 393.170, RSMo, does not provide a mechanism for the Commission to revoke a certificate of convenience and necessity (CCN) once it has been granted. The Supreme Court of Missouri has also determined that the Commission does not have the authority to revoke a CCN, and there is no statutory provision for a public utility to abandon a CCN. A CCN is only a grant of authority. The Commission determined that because there is no provision for Grain Belt to affirmatively relinquish its CCN, prior to a two-year expiration for inaction, the CCN Order's original grant of authority continues. Complainant's complaint was denied.

ELECTRIC

§17. Abandonment and discontinuance

The Commission rejected the argument of Complainants, composed of several Missouri landowners, who filed a complaint alleging that that Respondents violated the Commission's previous order granting a certificate of convenience and necessity (CCN) by issuing a press release, and publishing on a website, changes to the transmission line project not approved by the Commission in its CCN Order. Complainants contended the changes mean that Grain Belt had abandoned the CCN it was granted and could no longer exercise the right of eminent domain.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs, Complainants,	)	
v.	)	**File No. EC-2021-0059**
Grain Belt Express, LLC, and Invenergy Transmission, LLC, Respondents.	)	

REPORT AND ORDER

Issue Date: August 4, 2021

Effective Date: September 3, 2021

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs, Complainants,	)	**File No. EC-2021-0059**
v.	)	
Grain Belt Express, LLC, and Invenergy Transmission, LLC, Respondents.	)	

APPEARANCES

Appearing For Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs:

Paul A. Agathen, Attorney at Law, 485 Oak Field Court, Washington, Missouri 63090

Appearing For Grain Belt Express, LLC, and Invenergy Transmission, LLC:

Andrew O. Schulte and Anne E. Callenbach, Attorneys at Law, Polsinelli PC, 900 W. 46th Place, Suite 900, Kansas City, Missouri 64112

Appearing for the Staff of the Missouri Public Service Commission:

Travis Pringle, Associate Counsel, Governor Office Building, 200 Madison Street, Jefferson City, MO 65102

Senior Regulatory Law Judge: John T. Clark

REPORT AND ORDER

I. Procedural History

The Commission granted Grain Belt Express Clean Line LLC (Grain Belt) a certificate of convenience and necessity (CCN) to construct and operate a high voltage direct current transmission line and an associated converter station, also known as the Grain Belt Express Project (Project).

The Project is an aproximatley 780-mile (206 miles in Missouri), overhead, multi-terminal +600 kilovolt high-voltage, direct current transmission line. The Missouri portion of the Project will be located in Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls counties. One of three converter stations will be located in Missouri in Ralls County. The Project is to deliver 500 megawatts (MW) of wind-generated electricity from western Kansas to customers in Missouri, and another 3,500 MW to states further east.

This authority to construct and operate the Project was granted in the Commission's Report and Order on Remand (CCN Order), issued in File No. EA-2016-0358 (CCN Case), on March 20, 2019. The Commission subsequently approved Invenergy Transmission LLC's (Invenergy) acquisition of Grain Belt and the Project in File No. EM-2019-0150, effective September 21, 2019.

On September 2, 2020, the Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs (collectively "Complainants") filed a complaint against Grain Belt and Invenergy (collectively "Respondents"). The complaint alleged that Respondents violated the CCN Order by issuing a press release, and publishing on a website, changes to the Project not

approved by the Commission in the CCN Order. Complainants contend the described changes mean that Grain Belt has effectively abandoned the CCN that was granted to it and thus no longer can exercise the right of eminent domain. Complainants ask that the Commission issue an order declaring that: (1) because Grain Belt has announced that it plans to build something materially different from what the Commission authorized and approved in the CCN Case, at this time Grain Belt no longer has a valid CCN to build the Project; and (2) Respondents have no legitimate right to claim that they still have eminent domain in Missouri.

The Commission issued notice of the complaint and directed its staff (Staff) to file a report. The Commission also ordered Respondents to file an answer to the Complaint by October 3, 2020.

On September 29, 2020, Staff, Complainants, and Respondents jointly filed a motion to suspend the case and establish a briefing schedule. This was prior to the date Respondents answer to the complaint was due, so an answer and a Staff report were never filed. Staff, Complainants, and Respondents' joint motion proposed that the Commission decide the case based upon briefs filed by the parties. Public Counsel is a party to all Public Service Commission cases, but did not participate in this case.

After the parties filed briefs and reply briefs the Commission issued an order directing additional briefing on December 16, 2020. That order also directed:

> Any party that believes presentation of further evidence is necessary to fully address the questions presented in the body of this order shall request such relief as the party deems necessary….

Complainants issued a set of nine data requests to Respondents to gather further evidence. Those data requests became the subject of a motion to compel filed by Complainants. *Respondents' Response to Complainants' Motion to Compel* states that the data requests impermissibly extend the scope of the case beyond the Commission's statutory mandate. The Commission partially granted and paritally denied the motion to compel. The Commission decided that an evidentiary hearing was necessary to determine whether Respondents violated any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission.

The Commission held an evidentiary hearing via WebEx on April 15, 2021. At the hearing, the Commission admitted the testimony of three witnesses and received 11 exhibits into evidence. Lewis Donald Lowenstein, President of the Missouri Landowners Alliance, testified for Complainants; Kris Zadlo, Vice President of Invenergy Transmission LLC, testified for Respondents; and Shawn Lange, Professional Engineer, testified for Staff. The parties submitted post hearing briefs on May 18, 2021.

II. Motion to Dismiss

Respondents filed a motion to dismiss this case on March 12, 2021, after Complainants filed exhibits without supporting testimony as their case-in-chief. The Commission determined that Complainants could potentially submit a case-in-chief without supporting testimony, and dispensed with the requirement to prefile testimony. At the evidentiary hearing, Respondents renewed their motion to dismiss asserting that Complainants have failed to meet their burden of production and have offered exhibits devoid of context, explanation, or sufficient foundation to form the basis of an act or

omission by Respondents that would be a violation under the statute governing Commission complaints. That motion will be addressed in this Report and Order.

III. Preliminary Matter

At the evidentiary hearing, the Commission took official notice of its Report and Order on Remand in File No. EA-2016-0358 (CCN Order), issued March 20, 2019.

IV. 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 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.[1] 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. [2]

1. Grain Belt Express, LLC, is an electrical corporation and public utility regulated by this Commission.[3]

[1] 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).
[2] 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)
[3] File No. EA-2016-0358, Report and Order on Remand, pages 37 and 38.

2. The Commission approved Grain Belt's CCN Application and Grain Belt was granted a CCN to construct the Project pursuant to Section 393.170.1, RSMo.[4]

3. The Project is an approximately 780-mile (206 miles in Missouri), overhead, multi-terminal +600 kilovolt high-voltage, direct current transmission line. The Missouri portion of the Project will be located in Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls counties. One of the three proposed converter stations will be located in Missouri in Ralls County. The Project is to deliver 500 megawatts (MW) of wind-generated electricity from western Kansas to customers in Missouri, and another 3,500 MW to states further east.[5]

4. On September 21, 2019, Invenergy acquired Grain Belt and the Project.[6]

5. Invenergy is subject to the same conditions placed on Grain Belt in the Report and Order in File No. EA-2016-0358.[7]

6. Grain Belt and Invenergy are both subject to the CCN Order issued on March 20, 2019 in File No. EA-2016-0358.[8]

7. On September 2, 2020, Complainants filed their formal complaint in this case. The complaint states that Respondents announced plans for changes to the project materially different from the Project approved by the Commission in the CCN Order. Complainants further state that because Respondents have publicly announced that they

[4] File No. EA-2016-0358, Report and Order on Remand, page 50.
[5] File No. EA-2016-0358, Report and Order on Remand, page 10.
[6] File No. EM-2019-0150, Report and Order. The Commission approved the acquisition of Grain Belt by Invenergy subject to all conditions placed upon Grain Belt in File No. EA-2016-0358. The Commission takes official notice of the Report and Order issued in File EM-2019-0150.
[7] File No. EM-2019-0150, Report and Order, page 16.
[8] File No. EA-2016-0358, Report and Order on Remand, and File No. EM-2019-0150, Report and Order.

no longer plan to build the project for which the CCN was granted, they do not have a valid CCN to build anything in Missouri.[9]

8. The Complaint alleges three proposed changes to the Project not approved by the Commission:

a. An increase in the project's delivery capacity to Kansas and Missouri to up to 2,500 megawatts (MW) of the line's 4,000-megawatt capacity which could make available as much as half or more of the Project's total capacity for Missourians.[10]

b. Providing broadband expansion for rural communities along the line route in Missouri.[11]

c. Beginning construction of the Missouri portion of the Project before obtaining approval for the line from the Illinois Commerce Commission, which Complainants assert would violate the condition that Respondents not begin construction in Missouri until they have obtained commitments for funding of the entire multi-state project. [12]

9. By way of relief, the formal complaint asks that the Commission issue an order declaring that because Grain Belt has announced that it plans to build something materially different from what the Commission authorized, it no longer has a valid CCN to build the line originally proposed. The formal complaint also asks that the Commission

[9] The Commission takes official notice of the formal complaint filed by Complainants on September 2, 2020, in this case.
[10] File No. EC-2021-0059, Formal Complaint, page 3.
[11] File No. EC-2021-0059, Formal Complaint, page 4.
[12] File No. EC-2021-0059, Formal Complaint, page 4.

declare that Respondents do not have a valid CCN, and Respondents have no claim to a right of eminent domain.[13]

10. The Commission approved the Project to deliver 500 MW to the converter station in Missouri, and 3,500 MW to the converter station near the Illinois and Indiana border for delivery to the PJM[14] system.[15] The Commission's CCN Order provides: "Grain Belt Express Clean Line LLC shall construct the proposed Missouri converter station to be capable of the actual delivery of 500 MW of wind power to the converter station."[16]

11. Broadband expansion for rural communities along the line route in Missouri was not addressed in the CCN Order.[17]

12. The CCN Order directed:

> The conditions to which Grain Belt Express Clean Line LLC and the Commission's Staff agreed in Exhibit 206 are approved and adopted. Exhibit 206 is attached as Attachment 1 and incorporated herein by reference as if fully set forth. Grain Belt Express Clean Line LLC is ordered to comply with the conditions in Exhibit 206." Exhibit 206 states that Grain Belt will not install transmission facilities on easement property in Missouri until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of this multi-state transmission project.[18]

[13] File No. EC-2021-0059, Formal Complaint, pages 5-6.
[14] PJM is a regional transmission organization that manages the transmission of electricity through all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.
[15] File No. EA-2016-0358, Report and Order on Remand, page 9.
[16] File No. EA-2016-0358, Report and Order on Remand, page 53.
[17] File No. EA-2016-0358, Report and Order on Remand.
[18] File No. EA-2016-0358, Report and Order on Remand, page 51, and Attachment 1, condition I. 1.

13. The Commission's CCN Order provided that if the design and engineering of the Project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC's Application[19], Grain Belt Express Clean Line LLC must file an updated application with the Commission for further Commission review and determination.[20]

14. Staff proposed the condition for the CCN Order that if the design and engineering of the Project is materially different the company must come back to the Commission due to Staff's concern about whether the Missouri converter station would be constructed.[21]

15. The failure to build a Missouri converter station would constitute a material change the design and engineering of the project.[22]

16. On August 25, 2020, Respondents issued a press release that contained the following statements:

a. As the new owner of Grain Belt, Invenergy Transmission plans to increase the project's delivery capacity to Kansas and Missouri to up to 2,500 megawatts of the line's 4,000-megawatt capacity.[23]

b. [The] Grain Belt [Project] will enable up to $7 billion in electricity cost savings for Kansas and Missouri consumers by 2045. This projected energy cost savings is in addition to $9 billion of total economic investment in Kansas and Missouri that is associated with Grain Belt.

[19] The Commission takes official notice of Grain Belt's CCN Application filed by Grain Belt in File No. EA-2016-0358, filed June 30, 2016.
[20] CCN Order, Ordering Paragraph 6.
[21] Transcript, page 111.
[22] Transcript, pages 111 and 112.
[23] Exhibit 1, page 1.

This includes investment in the transmission line and associated new renewable energy generation, which will support thousands of jobs during construction, generate revenues for local governments and landowners, and expand rural broadband at a critical time for both states' economies.[24]

c. Building upon the unanimous regulatory approvals from Kansas and Missouri in 2019, Grain Belt Express will seek approvals to the extent necessary for expanded delivery to Kansas and Missouri as well as for beginning the first phase of project construction prior to Illinois regulatory approval.[25]

17. As of January 14, 2021, the Grain Belt website, www.grainbeltexpress.com, contained the following statements that the Project would provide:

a. Up to 2,500 MW of low-cost clean energy delivered to Missouri and Kansas customers, including delivery to 39 municipal utilities across Missouri.[26]

b. Broadband infrastructure for rural communities along the line route.[27]

The Grain Belt website also stated the following regarding Illinois approval:

c. Grain Belt Express does not have a pending or proposed regulatory filing in Illinois and is evaluating options for the project in the state.[28]

[24] Exhibit 1, page 1.
[25] Exhibit 1, page 1.
[26] Exhibit 2, page 2.
[27] Exhibit 2, page 2.
[28] Exhibit 2, page 2.

18. On December 8, 2020, a landowner update letter was sent to a Missouri landowner indicating that Grain Belt would be moving from monopole structures to steel lattice structures. The letter states that landowners will receive $18,000 for each lattice tower instead of $6,000. Each lattice tower will have a footprint of 40 by 40 feet. Grain Belt estimates there will be four structures per mile.[29]

19. Grain Belt's CCN Application states:

> "Consistent with 4 CSR 240-3.105(1)(B)2[30], the Company states that it plans to use three types of structures for the Project: lattice, lattice mast, and tubular steel monopole. The structures chosen will be based on specific conditions at particular locations or in particular segments of the Project."[31]

20. Complainants did not submit any blueprints, engineering documents, or engineering studies for Staff's review.[32] No blueprint or engineering evidence of changes was offered as evidence in this complaint.

21. Kris Zadlo, Vice President of Invenergy Transmission LLC, is responsible for the design and engineering of the Project.[33]"

22. At the time of hearing in the complaint case, Respondents had not begun implementing any of the changes proposed in either the press release or Grain Belt's website.[34]

23. Respondents have not started the engineering and design of the converter stations, and are only approximately 30 percent done with the engineering and design for

[29] Exhibit 2, Attached exhibit A.
[30] This regulation has been moved and is now in 20 CSR 4240-20.045.
[31] File No. EA-2016-0358, Grain Belts CCN Application, page 24.
[32] Transcript, page 115.
[33] Transcript, page 75.
[34] Transcript, page 95.

the Project. That 30 percent has been focused on the Commission certificated transmission route.[35]

24. Respondents' witness, Kris Zadlo, credibly testified that the press release was a marketing exercise to indicate Respondents openness to providing more power to Missouri.[36]

25. Kris Zadlo testified that Invenergy hired a consulting firm to analyze market impacts of increasing the capacity of the converter station and the amount of electricity delivery in Missouri beyond 500 megawatts. He testified that the point of the press release was to announce those consumer benefits publicly and announce an openness by Grain Belt to increase the converter station and dropoff in Missouri.[37]

26. Kris Zadlo testified that the press release concerned proposed changes in the Project and not actual changes.[38]

27. Kris Zadlo credibly testified that Respondents have not committed to a larger converter station or delivery of more than 500 megawatts in Missouri.[39]

28. Kris Zadlo credibly testified that there have been no changes to the design and engineering of the Project.[40]

29. Kris Zadlo credibly testified that Respondents have no intent to abandon the current CCN.[41]

[35] Transcript, pages 95 and 97.
[36] Transcript, page 76.
[37] Transcript, page 94.
[38] Transcript, page 96.
[39] Transcript, pages 94-95.
[40] Transcript, page 76
[41] Transcript, page 96.

30. Kris Zadlo credibly testified that Respondents are continuing to pursue the Commission certificated version of the Project.[42]

V. Conclusions of Law

A. Grain Belt is a public utility as defined by Section 386.020(43), RSMo.[43]

B. Grain Belt is an electrical corporation as defined by Section 386.020(15), RSMo.[44] Therefore, it is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

C. In its Findings of Fact in the CCN Order, the Commission found:

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

D. The Commission's CCN Order conditions:

> If the design and engineering of the project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC's Application, Grain Belt Express Clean Line LLC must file an updated application with the Commission for further Commission review and determination.[45]

E. Section 386.390, RSMo provides that a person may file a complaint against a regulated utility setting forth any act or thing done or omitted to be done by any public utility in violation of any provision of law subject to the commission's authority, any rule promulgated by the commission, any utility tariff, or any order or decision of the

[42] Transcript, page 77.
[43] File No. EA-2016-0358, Report and Order on Remand, page 38.
[44] File No. EA-2016-0358, Report and Order on Remand, page 37.
[45] File No. EA-2016-0358, Report and Order on Remand, page 52.

commission. Therefore, the Commission has authority over this complaint.

F. The Commission has no jurisdiction or authority to grant a public utility eminent domain.[46]

G. The Commission has no jurisdiction and does not regulate the construction or operation of rural broadband.[47]

H. Section 393.170, RSMo concerning CCNs provides that no electrical corporation shall begin construction of an electric plant without first having obtained the permission and approval of the Commission. It also provides that the Commission may by its order impose such conditions as it deems reasonable and necessary. Unless the authority conferred by the CCN is exercised within a period of two years from the granting of a CCN, it is null and void.

I. The Commission has no authority to terminate a CCN.[48]

J. Missouri Court Rule 59.01(b), concerning the effect of a request for admissions, provides that any matter admitted pursuant to Rule 59.01 is conclusively established.

K. Complainants bear the burden of proof to show by a preponderance of evidence that Respondents have violated a law subject to the Commission's authority, a Commission rule, or an order of the Commission.[49]

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[46] Section 386.250, RSMo provides that the Commission has jurisdiction over electric, gas, water, sewer, and telecommunications public utilities in Missouri. Section 523.262 RSMo governs eminent domain for public utilities.

[47] Section 386.250, RSMo provides that the Commission has jurisdiction over electric, gas, water, sewer, and telecommunications public utilities in Missouri.

[48] *State ex rel. City of Sikeston v. Public Service Com'n of Missouri*, 82 S.W.2nd 105 (1935). The Court held that the Commission did not have the authority to terminate authority granted to the Missouri Utilities Company.

[49] Section 386.390 RSMo, and *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003). Stating that in cases "complainant alleges that a

VI. Decision

Complainants allege that by publicly announcing that they plan to build something materially different from what was authorized by the Commission, Respondents have violated the CCN Order. Complainants also allege that Respondents are acquiring easements without a valid CCN. Complainants argue that because Grain Belt has announced that it plans to build something materially different from what the Commission authorized and approved in the CCN Case, Respondents no longer have a valid CCN to build the Project.

Section 393.170, RSMo gives the Commission the authority to grant CCNs, and provides that no electrical corporation shall begin construction of an electric plant without first having obtained the permission and approval of the Commission. Section 393.170, RSMo does not provide a mechanism for the Commission to revoke a CCN once it has been granted. The Supreme Court of Missouri has also determined that the Commission does not have the authority to revoke a CCN.[50] Likewise, there is no statutory provision for a public utility to abandon a CCN. A CCN is only a grant of authority. Complainants claim that because Respondents announced plans to build something different from the authority granted, Respondents have abandoned their CCN. Since there is no provision for Respondents to affirmatively relinquish their CCN, prior to a two-year expiration due for inaction, the CCN Order's original grant of authority continues. The authority conferred

regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing
rests with the complainant."

[50] *State ex rel. City of Sikeston v. Public Service Com'n of Missouri*, 82 S.W.2nd 105 (1935).

in the CCN Order for the originally certificated Project remains valid. Therefore, Respondents have a valid CCN.

The Commission's statutory authority in complaint cases, pursuant to Section 386.390, RSMo, is limited to determining whether a public utility committed any act or failed to act in violation of any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission. Complainants allege that Respondents have violated the Commission's CCN Order by publicly announcing that they plan to build something materially different from what was authorized. Accordingly, there are two issues for the Commission to decide when determining whether Respondents have violated the CCN Order:

1. Does the evidence show that Grain Belt's website and press release demonstrate the Project's design and engineering is materially different from what was approved in the Report and Order on Remand issued in File No. EA-2016-0358?

2. Did the public announcement of those contemplated changes violate the Commission's Report and Order on Remand granting Grain Belt a CCN in File No. EA-2016-0358?

For the Commission to find that Respondents have violated the CCN Order the Commission must find that at least one proposed change, if implemented, was materially different in engineering and design from what was approved, and that the announcement of those proposed changes in the press release and website was a violation of the Commission's CCN Order.

"Materially different" as used in the CCN Order is not a legal term of art. Staff proposed that Respondents be required to seek approval of any changes to the design

and engineering of the Project as a condition for granting the CCN. That condition was subsequently adopted by the Commission in the CCN Order. Staff proposed this condition because it was concerned that the Missouri converter station might not be built. This concern that the converter station would not be built was the only evidence presented at the complaint hearing as to what would constitute a change in the design and engineering of the project that would be materially different.

No one disputes that Respondents made statements on their website and in a press release proposing changes to the Project. That fact was stipulated to in the *Joint Motion to Suspend Deadlines and Establish Briefing Schedule*, and the Respondent admitted as much in their answer to a request for admissions. The August 25, 2020, press release was also received into evidence without objection and speaks for itself. It is indisputable that Respondents made the public announcements that Complainants allege.

Complainants assert that Respondents have announced they will be increasing the Project's delivery capacity to Kansas and Missouri to up to 2,500 MW instead of the 500 MW to the converter station in Missouri as originally proposed, and that this is materially different in design and engineering from what was approved. Complainants hypothesize that there could not be an increase in power delivery to Missouri without a change in the size of the converter station, which they see as a material change. However, beyond speculation that the converter station would have to be larger, Complainants provided no evidence that the delivery of more capacity to Missouri materially changes the design and engineering of the project.

Complainants assert that Grain Belt's website states that the Project will provide broadband expansion for rural communities along the line route in Missouri. They explain that this proposed change is materially different because it was not mentioned in the CCN application nor approved in the CCN Order. Complainants did not explain how this is a material change in engineering and design, only that it is outside what was approved in the CCN Order. Complainants presented no evidence that the delivery of rural broadband would result in any alteration in the design and engineering of the Project.

Complainants assert that Grain Belt is changing transmission poles from monopole structures to steel lattice structures, which Complainants believe is a material change from what was approved. However, Grain Belt's CCN Application states that it plans to use three types of structures for the Project: lattice, lattice mast, and tubular steel monopole. Complainants did not explain or provide evidence that this change to the Project would be materially different in design and engineering from what the Commission approved in the CCN Order.

Finally, Complainants assert that Respondents plan to begin the first phase of project construction prior to Illinois regulatory approval, which they say violates the condition that Respondents obtain commitments for funds in an amount equal to or greater than the total cost to build the Project. Complainants put on no evidence that Respondents have begun the first phase of construction.

The Commission cannot determine that the changes proposed by Respondents are materially different in the design and engineering of the Project because there is insufficient evidence to make that determination. With the exception of hypothesizing the need for a larger Missouri converter station, Complainants offered evidence to show only

that the proposed changes were not exactly as approved, not that the proposed changes would be materially different in design and engineering.

The Commission is aware of the value of a press release, which may be less a statement of fact than a statement of aspiration. Respondents have undertaken a marketing exercise to ascertain how their openness to changes in the Project would be received. Respondents may actually desire to make the proposed changes contained in the press release and website, but Respondents did not begin construction of an unauthorized project when they issued the press release. Respondents testified that they have not abandoned their CCN and they continue to pursue the Commission certificated Project. Complainants' primary evidence of Respondents' public announcement of changes to the Project, the press release, expressly acknowledges that Respondents will seek the authority necessary to implement proposed changes to the Project.

If Respondents were to take action outside the design and engineering authority granted by the CCN Order they could be found in violation of the condition that Respondents seek approval of any design and engineering that is materially different from what was presented in Grain Belt's CCN Application. The CCN Order does not provide any time limitation for Respondents to seek the necessary authority to implement any design and engineering changes that are materially different, but logically any request for authority would need to be approved prior to the implementation of any material design and engineering changes.

Complainants have the burden to show that the Respondents have violated the CCN Order. Complainants have presented evidence that Respondents are contemplating changes to the Project, but failed to provide sufficient evidence from which the

Commission could find those changes, if implemented, would be materially different in the design and engineering of the Project. Further, they have failed to meet their burden to show that the Respondents have taken any concrete actions to implement any such changes apart from a press release and website statements indicating that such changes are being considered. Mere speculation by the Respondents about possible future actions cannot violate the Commission's order. Complainants have not pointed to any instance where Respondents are currently building anything that would require them to apply to the Commission for additional authorization. Therefore, Complainants have failed to meet their burden of proof and the Commission must rule in favor of Respondents.

THE COMMISSION ORDERS THAT:

1. The Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, and John G. Hobbs's complaint is denied.

2. Grain Belt Express, LLC, and Invenergy Transmission, LLC's motion to dismiss is denied as moot.

3. This order shall become effective on September 3, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro Request for Variance of 20 CSR 4240-3.175	)))	**File No. EE-2021-0423**
In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West Request for Variance of 20 CSR 4240-3.175	)))	**File No. EE-2021-0424**

ORDER GRANTING VARIANCE

ELECTRIC

§18. Depreciation

Commission Rule 20 CSR 4240-3.175(1) provides that "[e]ach electric utility subject to the commission's jurisdiction shall submit a depreciation study, database and property unit catalog ("submissions") to the manager of the commission's energy department and to the Office of the Public Counsel. . . ." Commission Rule 20 CSR 4240-3.175(2) provides that the Commission may waive or grant a variance from the provisions of this rule, in whole or in part, for good cause shown, upon a utility's written application.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of August, 2021.

In the Matter of Evergy Metro. Inc. d/b/a Evergy Missouri Metro Request for Variance of 20 CSR 4240-3.175	)))	**File No. EE-2021-0423**
In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West Request for Variance of 20 CSR 4240-3.175	)))	**File No. EE-2021-0424**

ORDER GRANTING VARIANCE

Issue Date: August 4, 2021 Effective Date: September 3, 2021

On June 24, 2021,[1] Evergy Metro, Inc. d/b/a Evergy Missouri Metro (Evergy Metro), in File EE-2021-0423 and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy West), in File EE-2021-0424 (collectively, "Evergy") asked the Missouri Public Service Commission to grant variances from the provisions of Commission Rule 20 CSR 4240-3.175 to allow them to delay the filing of a depreciation study, data base, and property unit catalog until the filing of their 2022 rate case(s). Evergy Metro and Evergy West have also requested a variance of the 60-day notice provisions of 20 CSR 4240-4.017(1).

Rule 20 CSR 4240-3.175(1) provides that "[e]ach electric utility subject to the commission's jurisdiction shall submit a depreciation study, database and property unit catalog ("submissions") to the manager of the commission's energy department and to the Office of the Public Counsel. . . ." Rule 20 CSR 4240-3.175.(1)(B) states when an

[1] All date references will be to 2021 unless otherwise indicated.

electric utility must make the submissions. Rule 20 CSR 4240-3.175(2) provides that the Commission may waive or grant a variance from the provisions of this rule, in whole or in part, for good cause shown, upon a utility's written application. Evergy Metro's submissions were due on June 30, and Evergy West's submissions were due on February 22.

On June 28, the Commission issued its Order Providing Notice, Establishing Intervention Deadline, and Directing Response. On July 21, the Commission Staff filed its Recommendation and Corrected Recommendation to Grant Requested Variances and Waiver, and Request that Evergy be Admonished to File Future Variance or Waiver Requests at Least Thirty Days Prior to Any Deadline. Evergy has filed no response. Staff made the following recommendations:

1. The Commission should grant in part the request by Evergy Missouri West and Evergy Missouri Metro for variances from Rule 20 CSR 4240-3.175(1)(B), but require Evergy to file the depreciation studies as soon as they are final and not later than the filing of Evergy's January 2022 rate cases.
2. The Commission should grant the request by Evergy for a waiver from Rule 20 CSR 4240-4.017(1).
3. The Commission should admonish Evergy to file requests for waivers or variances from Commission rules that establish filing deadlines before those deadlines have passed, and in general at least thirty (30) days in advance of the deadline to provide time for Staff and any interested party to provide a response within ten (10) days as provided in 20 CSR 4240-2.080(13) as well

as for the Commission to issue an order with an effective date prior to the passing of the applicable deadline.

Evergy believed that the depreciation studies should be filed in a rate case. Under Rule 20 CSR 4240-3.160(1)(A), if Evergy files its depreciation studies, databases, and property catalogs prior to its next rate case, it does not have to file them again as part of the rate case. Evergy states that granting its request will have no negative effect on its customers or the general public. Evergy's request neither sets depreciation rates nor determines how the cost of depreciation will be accounted for in Evergy's next rate case. Therefore, the Commission finds good cause shown for granting Evergy's request for a variance of Rule 20 CSR 4240-3.175(1)(B). Evergy filed its request for variance from the February 2021 deadline several months after the deadline had passed and its request for variance from the June 2021 deadline less than ten days before it was due to pass. Accordingly, the Commission admonishes Evergy for failing to timely request a variance, and will order Evergy to submit the depreciation databases and property unit catalogs as soon as they are final, but not later than October 1.

The Commission will grant Evergy's request for a waiver from the sixty-day notice requirement of Rule 20 CSR 4240-4.017(1). Based upon Evergy's filed declaration, the Commission finds Evergy had no communications with the Commission within the prior one hundred fifty days regarding any likely substantive issue in the case. Staff has identified no harm or prejudice that will result from granting the waiver and does not oppose the waiver. Accordingly, the Commission finds good cause to grant the waiver request.

THE COMMISSION ORDERS THAT:

1. Evergy's request for a waiver of Rule 20 CSR 4240-4.017(1) is granted.

2. The Commission grants Evergy requests for variance from Rule 20 CSR 5250-3.175(1)(B), subject to the condition that Evergy shall submit depreciation studies, databases and property unit catalogs to the Commission's Energy Department and the Office of the Public Counsel as soon as they are final and, in any event, no later than October 1, 2021.

3. This Order shall be effective September 3, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of Evergy Missouri West, Inc., d/b/a Evergy Missouri West and the City of Higginsville for Approval of a Written Territorial Agreement Designating the Boundaries of each Electric Service Supplier in Portions of Lafayette County, Missouri	))))))	**File No. EO-2021-0388**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

ELECTRIC

§6. Territorial agreements

Pursuant to Subsections 394.312.3 and .5, RSMo, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

Since the city and the utility filed a joint application stating that the parties agreed to the territorial agreement and no one has requested a hearing, no hearing is required.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of August, 2021.

In the Matter of the Joint Application of Evergy Missouri West, Inc., d/b/a Evergy Missouri West and the City of Higginsville for Approval of a Written Territorial Agreement Designating the Boundaries of each Electric Service Supplier in Portions of Lafayette County, Missouri.	))))))	**File No. EO-2021-0388**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: August 4, 2021 Effective Date: September 3, 2021

This order approves the Territorial Agreement between Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy) and the City of Higginsville, Missouri (Higginsville) ("Joint Applicants") that will make Higginsville the exclusive service provider for two parcels of land previously served by Evergy in an area immediately adjacent to Higginsville's city limits in Lafayette County, Missouri.

Findings of Fact

1. Evergy is a Missouri corporation primarily engaged in the generation, transmission, distribution, and sale of electricity in western Missouri and eastern Kansas. Evergy is an "Electrical corporation" and "Public utility" under Section 386.020(15) and (43), RSMo and is subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393, RSMo. Evergy's principal office and place of business are at 1200 Main Street, Kansas City, Missouri 64105.

2. Higginsville is a fourth class Missouri city under Section 79.010, RSMo. Higginsville owns, operates and maintains an electric distribution system within its corporate limits to serve customers in its municipal service area.

3. Higginsville's Electric department is extending an electric 3-phase line near the junction of Interstate 70 and Missouri 13 Highway. As part of that extension, Higginsville sought to acquire two customers from Evergy.[1]

4. On May 5, 2021,[2] the Joint Applicants filed a Joint Application for Approval of a Territorial Agreement. They filed an Amended Joint Application on June 29 and a Second Amended Joint Application on July 16.

5. The Territorial Agreement provides that Higginsville will acquire two customers in an area immediately adjacent to its city limits. The two parcels of land are currently served by Evergy.[3] Higginsville prefers not to annex the area at this time, but, instead, to acquire just the two customers in the area. Both customers have agreed and signed a statement in favor of changing service providers to Higginsville.[4]

6. To facilitate this service, Evergy and Higginsville have agreed that Higginsville will serve as electric provider in the tract of land described in the Joint Application.[5]

[1] The Original Joint Application, Appendix B.
[2] All date references will be to 2021 unless otherwise indicated.
[3] The original Joint Application, Facts, paragraph 4, states that Higginsville approached Evergy about acquiring two customers in an area adjacent to Higginsville.
[4] The original Joint Application, Facts, paragraph 5, states that one of the customers "has been inactive for some time."
[5] Original Joint Application, Facts, paragraph 4; and Appendix A. The original Joint Application states the tract is located in the East, NE ¼ of Section 35, Township 49N, Range 26W in Lafayette County, MO, being approximately 7.38 acres.

7. On May 6, the Commission issued notice to potentially interested persons, set a June 5 deadline for intervention requests, and set a June 20 deadline for recommendations from the Commission's Staff or any other party. On June 28, the Commission extended the deadline for Staff's recommendation to July 20. No intervention requests have been filed.

8. On July 20, Staff filed its recommendation that the Commission approve the Second Amended Application and associated Territorial Agreement and order Evergy to file compliance tariff sheets describing the modification to its service territory.

9. Based on the information provided in the verified Second Amended Joint Application filed on July 20 and Staff's recommendation, the Commission finds the Territorial Agreement establishes exclusive service territories for the two electric suppliers. It also minimizes a duplication of utility facilities for the tract. The establishment of exclusive service territories will prevent future duplication of electric service facilities, promote economic efficiencies and benefit the public safety and aesthetics of the community. The Commission finds that the designation of the electric service area stated in the Territorial Agreement is in the public interest and that the Territorial Agreement is not detrimental to the public interest.

Conclusions of Law

A. Section 394.312, RSMo, gives the Commission jurisdiction over electric service territorial agreements, including those between electrical corporations and municipally owned utilities.[6]

[6] Section 394.312.1 and .4, RSMo.

B. Pursuant to subsections 394.312.3 and .5, RSMo, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

C. Section 394.312.5, RSMo, provides 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 an agreement was made and no hearing was requested, the Commission may make a determination without an evidentiary hearing.[7] Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission now determines that all material facts are in accordance with its decision.

Decision

The Commission concludes the electric service area designation made in the Second Amended Joint Application and associated Territorial Agreement is in the public interest and that the Territorial Agreement is not detrimental to the public interest. The Commission will approve the Territorial Agreement.

THE COMMISSION ORDERS THAT:

1. The Territorial Agreement as presented in the Second Amended Joint Application is approved.

2. Evergy and Higginsville are authorized to perform the Territorial Agreement and all legal acts and things necessary to performance.

[7] *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

3. No later than October 3, 2021, Evergy shall file compliance tariff sheets describing the modification of its service territory which include a metes and bounds legal description of the affected parcels.

4. This order shall become effective on September 3, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Claude Scott,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. WC-2020-0407**
	)	
Missouri-American Water Company,	)	
	)	
Respondent.	)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

§33. Defaults

The Commission's Staff argued that Complainant's complaint should be dismissed with prejudice pursuant to Missouri Rule of Civil Procedure 67.01. Staff argues that Complainant did not show up to his evidentiary hearing, which was essentially a continuation of his prior complaint that was dismissed for Complainant's failure to appear at a prehearing conference. The Commission was sympathetic to Staff's frustration and concern that Complainant may be wasting the Commission's resources and abusing the Commission's rules and procedures in an effort to avoid paying legitimate utility charges. However, Missouri Rule of Civil Procedure 67.01 is merely definitional and applies to Missouri courts and not the Commission.

§6. Weight, effect and sufficiency

In this case, the Commission afforded Mr. Scott every opportunity to be heard. Mr. Scott's participation in this complaint was minimal, but there is sufficient evidence of record for the Commission to decide this complaint on its merits.

§22. Parties

§25. Pleadings and exhibits

Commission Rules 20 CSR 4240-2.110(2)(B) and 20 CSR 4240-2.116(3) together provide that the Commission may dismiss a party or a party's complaint for failure to appear at a hearing or any scheduled proceeding.

WATER

§19. Service

Mr. Scott said that his meter was defective and needed to be replaced. The request to replace a potentially defective meter implies a meter test. A meter check does not require removal or replacement of the meter as a meter test does. The Commission found that Mr. Scott's request was for a meter test and not a meter check. Missouri American Water Company's interpretation of its tariff was not made in bad faith, but is nevertheless inaccurate. MAWC should consider what a customer's request involves, and not whether a particular word was used in the request.

§31. Billing practices

Complainant failed to prove his allegation that Missouri-American Water Company overbilled him for water usage by estimating his bills, failed to post payments to his account, failed to apply credits to his account, and failed to replace his meter on request.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Claude Scott, Complainant, v. Missouri-American Water Company, Respondent.	))))))))	**File No. WC-2020-0407**

REPORT AND ORDER

Issue Date: September 23, 2021

Effective Date: October 23, 2021

APPEARANCES

Appearing For Claude Scott:

Claude Scott, 3725 Geraldine Avenue, Saint Ann, Missouri 63074-2004.

Appearing for Missouri American Water Company:

Jennifer Hernandez, Brydon, Swearengen & England, PC, 312 East Capitol, Jefferson City MO 65102

Appearing for the Staff of the Missouri Public Service Commission:

Travis Pringle, Associate Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: John T. Clark

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Claude Scott, Complainant, v. Missouri-American Water Company, Respondent.	))))))))	**File No. WC-2020-0407**

REPORT AND ORDER

I. Procedural History

Claude Scott filed a complaint with the Public Service Commission against Missouri-American Water Company (MAWC) on June 22, 2020. Mr Scott complains that MAWC overbilled him for water usage by estimating his bills, failed to post payments to his account, failed to apply credits to his account, and failed to replace his meter on request. Mr Scott states that the amount at issue is $211.27. Accordingly, the Commission treats this complaint under the Commission's small complaint rule, 20 CSR 4240-2.070(15).

The Commission issued notice of the complaint, directed MAWC to file an answer, and directed the Commission's Staff (Staff) to file a report on the Complaint. MAWC filed an answer to Mr. Scott's complaint on June 23, 2020. The answer included a motion to dismiss the complaint for Mr. Scott's failure to pay a portion of his bill that was not disputed, as required by Commission Rule 20 CSR 4240-2.070(7). MAWC additionally alleged that Mr. Scott was frivolously using the Commission's complaint process to delay disconnection of his water service. The Commission determined that MAWC's motion to

dismiss constituted a request for summary determination and, due to noncompliance with Commission Rule 20 CSR 4240-2.117, the Commission did not consider the request.

Staff filed a report detailing its investigation and analysis on August 20, 2020. There were no responses to Staff's report, so the Commission directed the parties to file a proposed procedural schedule, which Staff and MAWC did on August 10, 2020. Mr. Scott did not participate in preparing the proposed procedural schedule. The Commission scheduled an evidentiary hearing for November 19, 2020, and later suspended that evidentiary hearing due to changes in the Commission's calendar.

The Commission directed the parties to file another proposed procedural schedule. Staff and MAWC again filed a proposed procedural schedule, and Mr. Scott did not participate in preparing that proposed procedural schedule. The Commission scheduled an evidentiary hearing for January 15, 2021. On the eve of that hearing, January 14, 2021, Mr. Scott requested a continuance to have additional time to review documents received from MAWC.

The Commission again ordered the parties to file proposed dates for an evidentiary hearing. The Commission set an evidentiary hearing for February 19, 2021, based upon the parties proposed dates. On the eve of that hearing, February 18, 2021, Mr. Scott sent an email to Staff counsel stating that he would not be attending the evidentiary hearing. MAWC filed a response to Mr. Scott's email objecting to continuing the evidentiary hearing.

The Commission again suspended the evidentiary hearing and directed the parties to file proposed dates for the evidentiary hearing. The Commission set an evidentiary

hearing for May 21, 2021, based upon dates proposed and submitted by Staff and MAWC. Mr. Scott did not participate in preparing that proposed evidentiary hearing date.

Staff and MAWC filed a *List of Issues, Witnesses, and Exhibits*, which contained four issues for the Commission's determination. Mr. Scott did not participate in preparing that list, but at no point during these proceedings did he object to those issues. The issues put forth by the parties for the Commission to determine are:

1. Did MAWC overcharge Mr. Scott by billing him for more water than he actually used?

2. Did MAWC fail to provide evidence of usage through actual meter readings on bills issued to Mr. Scott?

3. Did MAWC fail to credit payments made by Mr. Scott to his account?

4. To the extent the answers to the issues above are yes, did MAWC violate any law, Commission rule, Commission order or decision?

On May 21, 2021, the Commission held an evidentiary hearing via telephone conference and WebEx. Mr. Scott failed to appear for the evidentiary hearing. At the hearing MAWC made an oral motion to dismiss Mr. Scott's complaint pursuant to Commission Rule 20 CSR 4240-2.116(3), which provides that a party may be dismissed from a case for failure to appear at any scheduled proceeding. The Commission will address that motion in this Report and Order.

Commission admitted the testimony of two witnesses and received ten exhibits onto the record at the evidentiary hearing. Tracie Figueroa, Business Service Specialist, testified for MAWC; and Scott Glasgow, Senior Data Analyst, Customer Experience Department, testified for Staff.

Staff and MAWC filed post-hearing briefs. Mr. Scott did not submit a post-hearing brief. On June 21, 2021, the case was deemed submitted for the Commission's

determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "[t]he record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument."

The Commission issued a Recommended Report and Order on September 8, 2021. Pursuant to 20 CSR 4240-2.070(15)(H), the parties were given ten days to file comments supporting or opposing the recommended order. No comments were received.

Customer specific information is confidential under Commission Rule 20 CSR 4240-2.135(2); however, the Commission may waive this provision under Commission Rule 20 CSR 4240-2.135(19) for good cause. Good cause exists to waive confidentiality as to Mr. Scott's bills and water usage because the Commission would be unable to write findings of fact or a decision that did not use some of Mr. Scott's customer specific information. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the decision.

II. Findings of Fact

1. MAWC is a utility regulated by this Commission.

2. Mr. Scott received water service from MAWC at his residence.[1]

3. On January 6, 2020, Mr. Scott filed a similar complaint against MAWC in File No. WC-2020-0194. That complaint also alleged that MAWC estimated his water usage and that his bills were higher than his actual water usage. The Commission

[1] Exhibit 300, and exhibit 103.

dismissed that complaint for failure to show good cause for not appearing at a prehearing conference.[2]

Issue 1 - Did MAWC overcharge Mr. Scott by billing him for more water than he actually used?

4. Mr. Scott's average water usage was less than 50 gallons a day.[3]

5. Mr. Scott's water usage is below average residential water usage. Average water usage according to the Missouri Department of Natural Resources is 80 gallons per day per resident.[4]

6. A water customer's bill contains different kinds of charges. There are Water Service Charges, which include the water service charge (a fixed charge) and a Water Usage Charge (actual water used at customer rate). There are also other charges such as the ISRS charge (an Infrastructure replacement charge based upon water usage), a water primacy fee, and a Service Line Protection Charge (St. Louis County Public Works service line repair program charge). Additionally, there are taxes.[5]

7. Mr. Scott's average monthly bill is $18.07 and his average monthly Water Charge is $6.66.[6]

8. Mr. Scott's bills contain the previous actual reading, the current actual reading, the meter units for that bill, and the billing units. The billing units multiplied by 100 equals the total gallons of water used for that billing period.[7]

[2] Exhibit 200, and File No. WC-2020-0194, *Order Dismissing Complaint*, issued May 21, 2020.
[3] Transcript, page 95, and exhibit 103.
[4] Exhibit 200.
[5] Transcript, page 68, and Exhibit 103.
[6] Exhibit 200.
[7] Exhibit 103, and exhibit 300.

9. The water usage charge on Mr. Scott's billing statements shows the water charge, multiplied by the water used to arrive at Mr. Scotts water usage charge. Mr. Scott's billing statements show that he was correctly billed for the amount of water he used.[8]

Issue 2 - Did MAWC fail to provide evidence of usage through actual meter readings on bills issued to Mr. Scott?

10. Advanced Meter Infrastructure (AMI) was installed at Mr. Scott's residence on January 22, 2019.[9] AMI allows MAWC to get actual meter readings from a meter several times a day without sending an employee to physically read the meter.[10]

11. AMI readings are actual meter readings.[11]

12. From January 22, 2019, forward Mr. Scott's meter was read by AMI.[12]

13. All of Mr. Scott's meter readings for the period in question, April 23, 2018 through December 16, 2020, were actual readings.[13]

14. Mr. Scott's billing statements show that his meter readings were actual readings and not estimates.[14]

15. There is no evidence that Mr. Scott's water usage was ever estimated at his current address.[15]

[8] Exhibit 103.
[9] Exhibit 200.
[10] Transcript, page 60.
[11] Transcript, page 61.
[12] Transcript, page 60
[13] Transcript, page 61
[14] Transcript, page 92, exhibit 103, and exhibit 300 attached billing statements.
[15] Exhibit 200.

Issue 3 - Did MAWC fail to credit payments made by Mr. Scott to his account?

16. Account ledgers provided by MAWC show all payments made by Mr. Scott from March 15, 2018, through December 24, 2020.[16] The account ledgers match information that Mr. Scott attached to his complaint.[17]

17. Three transactions take place within MAWC's accounting system when a payment posts to a customer's account. There is a manual posting (soft posting), a payment lot (hard posting), and a reversal reversing the manual posting.[18] Notations on an account ledger attached to Mr. Scott's complaint indicate that he may not have understood how payment postings were ledgered.[19]

18. MAWC's witness, Tracie Figueroa, credibly testified that she was not aware of any time that MAWC failed to credit Mr. Scott's payments to his account.[20]

19. Staff's witness, Scott Glasgow, credibly testified that MAWC's account for Mr. Scott is accurate, that MAWC has billed Mr. Scott accurately, and that Mr. Scott's payments have posted to his account.[21]

Issue 4 - To the extent the answers to the issues above are yes, did MAWC violate any law, Commission rule, Commission order or decision?

20. On February 26, 2019, Mr. Scott contacted MAWC to tell them he does not believe he is using that much water and that he wants to be sure his meter was functioning correctly and was only being used for his side of the duplex.[22]

[16] Exhibit 102.
[17] Transcript page 64, and Exhibit 300.
[18] Transcript page 62.
[19] Exhibit 300.
[20] Transcript page 64.
[21] Transcript page 93.
[22] Transcript pages 75-76

21. On March 7, 2019, MAWC performed a meter check. Meter checks involve a field service representative going to the meter location, looking at the meter, verify the reading is correct, and checking the leak indicator.[23] Mr. Scott was not present. The meter check did not reveal any leaks. [24]

22. MAWC did not perform a meter test at that time because Mr. Scott did not ask for a meter test.[25]

23. On July 30, 2019, Mr. Scott contacted MAWC to inform them that he thought his meter was defective and needed to be replaced.[26]

24. MAWC removed Mr. Scott's meter for testing on August 26, 2020,[27] after Mr. Scott had filed his formal complaint with the Commission.[28]

25. Mr. Scott's meter passed the meter test. The meter test showed that Mr. Scott's meter was 100 percent accurate for high flow, 101 percent accurate for medium flow, and 90 percent accurate for low flow.[29]

26. The meter met the American Waterworks Association accuracy standards, which are higher than the Commission's standard.[30]

27. The 90% accuracy on low flow water usage favored Mr. Scott.[31]

[23] Transcript, page 72.
[24] Transcript, page 76-77.
[25] Transcript, page 70-71.
[26] Transcript, page 94.
[27] Transcript, page 63, and Exhibit 100.
[28] Exhibit 300.
[29] Transcript, pages 59-60
[30] Transcript, page 60
[31] Transcript, page 60

III. Conclusions of Law

A. MAWC is a public utility as defined by Section 386.020(43), RSMo. Furthermore, MAWC is a water corporation as defined by Section 386.020(59), RSMo. Therefore, MAWC is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Section 386.390 provides that a person may file a complaint against a utility, regulated by this Commission, setting forth violation(s) of any law, rule or order of the Commission.

C. Commission Rule 20 CSR 4240-13.050(6) regarding disputed amounts and disconnection states:

> (6) A utility shall maintain an accurate record of the date of mailing or delivery. A notice of discontinuance of service shall not be issued as to that portion of a bill which is determined to be an amount in dispute pursuant to sections 4 CSR 240-13.045(5) or (6) that is currently the subject of a dispute pending with the utility or complaint before the commission, nor shall such a notice be issued as to any bill or portion of a bill which is the subject of a settlement agreement except after breach of a settlement agreement, unless the utility inadvertently issues the notice, in which case the utility shall take necessary steps to withdraw or cancel this notice.

MAWC Relevant Tariff Sections

D. PSC No. 13, 1st Revised Sheet R35

> Rule 16 – Meter Tests and Test Fees
>
> C. The Company will make a test of the accuracy of any water meter, free of charge, upon request of a Customer, provided that the meter had not been tested within twelve (12) months previous to such request. If a Customer requests a test of a meter and the meter has been tested within twelve (12) months previous to such request, the cost of the most recent request shall be borne as specified by the Commission.

D. A meter test requested by the Customer will be witnessed by the Customer, Owner, or their duly authorized representative, except tests of meters larger than two inches (2") inside diameter will be conducted by either the meter manufacturer or qualified meter testing service and a certified copy of the test will be provided to the Customer, Owner or duly authorized representative.

E. PSC No. 13, 1st Revised Sheet R31

Rule 14 – Service Charges

C. Company personnel will conduct necessary investigation for unusually high usages, checking meter readings, reasonable enforcement of these Rules and Regulations, or to satisfy Customer inquiries upon either Company instigation or Customer request. However, after making one such special meter reading or investigation at the request and for the convenience of the Customer, any additional services of this nature performed for the Customer within thirty-one (31) days for monthly read Customers and ninety-two (92) days for quarterly read Customers shall constitute special services and the Company shall require a payment as shown on the applicable rate sheet.

F. The burden of showing that a regulated utility has violated a law, rule or order of the Commission is with Mr. Scott.[32]

IV. Decision

Staff's brief argues that the Commission should dismiss Mr. Scott's complaint pursuant to Commission Rules 20 CSR 4240-2.110(2)(B) and 20 CSR 4240-2.116(3), which together provide that the Commission may dismiss a party or a party's complaint for failure to appear at a hearing or any scheduled proceeding. Staff also asks that the dismissal be with prejudice pursuant to Missouri Rule of Civil Procedure 67.01, which states "[a] dismissal with prejudice bars the assertion of the same cause of action or claim against the same party." In support of its request, Staff states that Mr. Scott has failed to

[32] In cases where a "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions,"..."the burden of proof at hearing rests with the complainant." *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).

comply with five Commission orders. Staff's brief further argues "[d]espite the Commission's charity in giving Complainant every opportunity to prosecute his complaint, he ultimately failed to appear at his hearing without attempting to get what would have been a third continuance." Staff additionally points out that this complaint is merely a continuation of Mr. Scott's previous complaint, File No. WC-2020-0194, which was dismissed after Mr. Scott did not show good cause for failing to appear at a prehearing conference. Staff argues that to protect the Commission's resources from a third attempt to prosecute this claim the Commission should dismiss Mr. Scott's complaint with prejudice to bar him from asserting these identical claims for the billing period of March 2018 through July 2020. Staff's brief does not discuss any of the issues in the complaint presented for the Commission's determination.

The Commission is sympathetic to Staff's frustration and concern that Mr. Scott may be wasting the Commission's resources and abusing the Commission's rules and procedures in an effort avoid paying legitimate utility charges. However, Staff does not cite any authority that extends to the Commission the ability to dismiss a complaint with prejudice. Missouri Rule of Civil Procedure 67.01, which provides this option to Missouri courts, appears to be primarily definitional.

While there is some overlap with Mr. Scott's previous complaint, his previous complaint was dismissed without prejudice and was not determined on its merits. Therefore, Mr. Scott is not barred from bringing issues from his prior complaint in this one.[33] Mr. Scott is a pro se litigant, not an attorney or regulated utility. Additionally, this

[33] "[W]hen an action is dismissed without prejudice, a plaintiff may cure the dismissal by filing another suit in the same court and, therefore, a dismissal without prejudice is not a final judgment for the purpose of appeal." Snelling v. Masonic Home of Missouri, 904 S.W.2d 251, 252 (Mo.App.1995).

complaint was filed in June of 2020 during the COVID-19 pandemic, and because of the pandemic, the Commission made numerous accommodations in many cases for many parties, including Staff. In this case, the Commission afforded Mr. Scott every opportunity to be heard. Mr. Scott's participation in this complaint was minimal, but there is sufficient evidence of record for the Commission to decide this complaint on its merits. Therefore, both Staff and MAWC's request to dismiss Mr. Scott's complaint for failure to appear at proceedings or comply with Commission orders will be denied.

The Commission's statutory authority in complaint cases, pursuant to Section 386.390, RSMo, is limited to determining whether a public utility committed any act or failed to act in violation of any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission. Mr. Scott alleges that MAWC has overbilled him for more water than he used, estimated his meter readings, and failed to replace a water meter for accurate readings. Accordingly, the Commission must first determine if any of Mr. Scott's allegations are correct, and then whether the allegations violate MAWC's tariff, a Commission order, a Commission rule, or a law subject to the Commission's authority.

It is Mr. Scott's burden to show that MAWC committed a violation. Mr. Scott did not participate in the evidentiary hearing, so he offered no testimony or evidence in support of his allegations. Nevertheless, the Commission admitted as evidence Mr. Scott's complaint and its attachments. The attachments to Mr. Scott's complaint ultimately bolster MAWC's assertion that MAWC did not use estimated meter readings, billed Mr. Scott for actual water usage, and properly posted payments to Mr. Scott's account. While the ledger and billing statements attached to Mr. Scott's complaint contain highlights and

notations made by Mr. Scott, without him to provide the necessary context, they are devoid of any support for his allegation. Additionally, none of the attachments to Mr. Scott's complaint concerned his request to have his meter changed.

Testimony from MAWC and Staff's witnesses, along with supporting documentary evidence demonstrated that MAWC did not estimate meter readings, did not overbill Mr. Scott for water usage, and did not fail to post payments to Mr. Scott's account. There is no evidence that any of those alleged actions occurred. Accordingly, there is insufficient evidence that MAWC violated any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission.

Staff does not bear a burden of proof in this complaint, nor is this Staff's complaint. Nonetheless, in its report, Staff asserts that MAWC did not promptly test the water meter at Mr. Scott's request in violation of MAWC's tariff. MAWC's tariff states that MAWC "will make a test of the accuracy of any water meter, free of charge, upon request of a Customer." MAWC's asserts it complied with its tariff because Mr. Scott did not ask for a test, but stated that he thought his meter was defective and needed to be replaced. Rather than test the meter, MAWC sent an employee to perform a meter check, which verifies the meter reading and checks to see if there is a leak. MAWC is reading its tariff provision too narrowly. Mr. Scott said that his meter was defective and needed to be replaced. The request to replace a potentially defective meter implies a meter test. A meter check does not require removal or replacement of the meter as a meter test does. The Commission's perspective is that Mr. Scott's request was for a meter test and not a meter check. MAWC's interpretation of its tariff was not made in bad faith, but is nevertheless

inaccurate. MAWC should consider what a customer's request involves, and not whether a particular word was used in the request.

After applying the facts to its conclusions of law, the Commission has reached the following decision. Mr. Scott has the burden to show that MAWC has violated a law, rule, or order of the Commission that is within the Commission's statutory authority to determine. Mr. Scott has failed to meet his burden of proof and the Commission rules in favor of MAWC.

THE COMMISSION ORDERS THAT:

1. Claude Scott's complaint is denied.

2. Staff and MAWC's requests to dismiss the complaint are denied as moot.

3. MAWC may proceed, consistent with the law and the Commission's rules, with Mr. Scott's account as appropriate.

4. This order shall become effective on October 23, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Mid Mo Sanitation LLC for a Certificate of Convenience and Necessity (Line Certificate) Authorizing it to Own, Operate, Maintain, Control and Manage a Sewer System in Callaway County, Missouri	)))))	**File No. SA-2022-0029**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§4. Jurisdiction and powers generally

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".

SEWER

§2. 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 at its office in Jefferson City on the 29th day of September, 2021.

In the Matter of Mid Mo Sanitation LLC for a Certificate of Convenience and Necessity (Line Certificate) Authorizing it to Own, Operate, Maintain, Control and Manage a Sewer System in Callaway County, Missouri	)))))	**File No. SA-2022-0029**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: September 29, 2021 Effective Date: October 29, 2021

On August 4, 2021,[1] Mid-MO Sanitation, LLC (Mid-MO) filed an application for a certificate of convenience and necessity (CCN) under Section 393.170.1, RSMo[2] to operate, control, manage, and maintain the portion of its sewer system outside of its existing service territory, including its land application equipment, and the full exercise of all rights and privileges granted under an operating permit issued by the Missouri Department of Natural Resources (Application). Mid-MO also requested a waiver of the 60-day notice requirements of Rule 20 CSR 4240-4.017(1).

Mid-MO provides sewer service to approximately 28 customers in Callaway County, Missouri, pursuant to a certificate of convenience and necessity previously granted by the Commission in Case No. SA-2009-0319. The area where the land application equipment is located and effluent is applied is outside the service area granted to Mid-MO in Case No. SA-2009-0319. No other sewer service is available in the area,

[1] All date references will be to 2021 unless otherwise indicated.
[2] All references to RSMo will be to the 2016 edition unless otherwise indicated.

but Mid-MO is not seeking to provide retail sewer service in the area of its land application system. Instead, Mid-MO is seeking authority "to install, acquire, build, construct, own, operate, control, manage, and maintain a sewer system (line certificate) for the public within" the area identified in Exhibit A of Mid-MO's Application. There is a single owner of the real estate on which the application equipment is located, and no residents.

In 2015, the Missouri Department of Natural Resources issued a new wastewater discharge permit for Lake Breeze Estates, which is within Mid-MO's current service area, granted in File No. SA-2009-0319. Mid-MO developed an Engineering Facility Plan that identified a "no-discharge—land application system" as the best, most affordable option. The Missouri Department of Natural Resources approved Mid-MO's proposed land application system. Mid-MO subsequently constructed and placed it into service.

On August 12, the Commission issued its Order Directing Notice and Establishing Time for Filings. The Commission Staff (Staff) filed its Recommendation on September 10. No applications to intervene were filed. Staff recommended that the Commission enter an order deciding that Mid-MO does not need a CCN to continue to operate, maintain, control, and manage the portion of its sewer system already within its service area. Staff recommended the Commission conclude it is authorized by statute to grant an area certificate to operate, maintain, control, and manage the portion of its sewer system, including the land application equipment outside of its currently existing service area, and to exercise all parts of the operating permitted granted to Mid-MO by the Missouri Department of Natural Resources. Staff recommended the Commission grant Mid-MO a CCN authorizing it to operate, maintain, control, and manage the portion of its

sewer system outside of its currently existing service area, to include the land application area, with the following conditions and actions:

1. Require Mid-MO to submit newly created and/or revised tariff sheets, to become effective upon approval from the Commission, that include an updated map and legal description to reflect its authority to operate its sewer system in the land application area:
   a. P.S.C. MO No. 1 1st Revised Sheet No. 3 Cancelling Original Sheet No. 3;
   b. P.S.C. MO No. 1 1st Revised Sheet No. 4 Cancelling Original Sheet No. 4;
   c. P.S.C. MO No. 1 1st Revised Sheet No. 5 Cancelling Original Sheet No. 5.
2. Require Mid-MO to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
3. Adopt the Depreciation Rates for Mid-MO as outlined in Attachment C to Staff's Memorandum attached to the September 10 Staff Recommendation;
4. Require a modification of the proposed lease agreement between William Bright and Mid-MO that addresses use activity limitations on the land application area in accordance with Mid-MO's Operating Permit; and
5. Make 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 Mid-MO, including expenditures related to the certificated service area, in any later proceeding.

Mid-MO asks for authority to "operate, maintain, control and manage a sewer system." Mid-MO is a sewer corporation and public utility as defined by Section 386.020,

RSMo and as such is under the jurisdiction of the Public Service Commission. The authority to operate the system and exercise the permit granted by the Missouri Department of Natural Resources is an authority the Commission is authorized to grant under Section 393.170.2, and the Commission concludes that liberally construed, Mid-MO's application invokes the Commission's authority under Section 393.170.2. Accordingly, the Commission is authorized by statute to grant Mid-MO a certificate to operate, maintain, control, and manage the portion of its sewer system, including the land application equipment outside of its currently existing service area, and to exercise all parts of the operating permit granted to Mid-MO by the Missouri Department of Natural Resources.

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

[3] Section 393.170.3, RSMo.

[4] The factors have been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Ord, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.SW.C.).

The Commission finds there is both a current and future need for sewer service in the certificated area. Mid-MO will continue to serve customers only within its currently existing service area. While the land application system is located outside of that service area, the system is necessary to continue serving the customers in Mid-MO's existing service area. No other sewer utilities, such as a public sewer district, are available to provide service.

The Commission finds that Mid-MO has the requisite qualifications to provide the service. Mid-MO has demonstrated technical and managerial qualifications to develop and operate its sewer system, which serves fewer than fifty customers, in that it has been doing so effectively for twelve years. The owner of Mid-MO owns and operates a successful electrical contracting business, providing him additional experience in business operations, and has contracted with an established certified operator to run the sewer system.

The Commission finds that Mid-MO has the financial ability to provide the service. Based upon Staff's investigation and recommendation, the Commission finds that the initial investment in the Mid-MO sewer treatment facilities, prior to the recent upgrades, has been recouped in the sale of commercial and residential lots. Mid-MO has funded the land application system upgrades through bank financing and its owners' funding support. Staff opines and the Commission finds that Mid-MO will generate sufficient revenues to remain viable with the approval of just and reasonable rates resulting from its pending rate case, Case No. SR-2021-0372. Staff has reviewed the likely rate impact of the land application equipment in Mid-MO's currently pending rate case and states the rates resulting from the additional land application equipment will be just and reasonable;

and based upon Staff's review and conclusions, the Commission finds that providing the service is economically feasible.

Finally, based upon Staff's investigation and recommendation, the Commission finds that expanding the CCN service area promotes the public interest. The plant currently located outside of Mid-MO's service territory is necessary for compliance with ammonia limits and the operation of Mid-MO's existing central sewer system, and, thus, necessary for the provision of safe and adequate service. The expansion of the service area to include the land application system ensures safe and adequate service for the future, and achieves compliance with DNR regulations.

The Commission makes no finding that will preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the joint application in any later proceeding.

No objections have been filed with respect to the application or Staff's recommendation. No party requested an evidentiary hearing in this matter, and no law requires one; so the Commission may grant the application's request based upon the verified application and Staff's verified recommendation.[5] Based upon its review of the application and Staff's recommendation, the Commission will grant the application subject to the conditions stated herein and will grant Mid-MO a CCN. The Commission finds good cause to grant Mid-MO's request for a waiver of the 60-day notice requirements of Rule 20 CSR 4240-4.017(1).

[5] See *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

THE COMMISSION ORDERS THAT:

1. Mid-MO's request for a waiver of the 60-day notice requirements of Rule 20 CSR 4240-4.017(1) is granted.

2. Mid-MO is granted a CCN authorizing it to operate, maintain, control, and manage the portion of its sewer system outside of its currently existing service area to include the land application area set out in Attachments A and B of Staff's Memorandum attached to Staff's Recommendation.

3. Mid-MO shall satisfy all CCN conditions and actions as set out in the body of this order, and, specifically shall submit newly created and/or revised tariff sheets that include an updated map and legal description to reflect its authority to operate its sewer system in the land application area.

4. This Order shall be effective on October 29, 2021.

5. This file may be closed on October 30, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Elm Hills Utility Operating Company, Inc., for a Certificate Of Convenience and Necessity to Provide Sewer Service In Johnson County, Missouri, as an Expansion of Its Existing Service Area.	))))))	**File No. SA-2022-0014**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

The Commission granted a certificate of convenience and necessity to Elm Hills Utility Operating Company to provide wastewater treatment service to four residential lots adjacent to Elm Hills' State Park Village service area.

§21.2. Technical qualifications of applicant

The Commission found that Elm Hills Utility Operating Company 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 the factors for granting a certificate of convenience and necessity to Elm Hills Utility Operating Company, Inc. were satisfied and that it was in the public interest for Elm Hills to provide wastewater treatment service to residential lots adjacent to Elm Hills' State Park Village service area in Johnson 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 14th day of October, 2021.

In the Matter of the Application of Elm Hills Utility Operating Company, Inc., for a Certificate Of Convenience and Necessity to Provide Sewer Service In Johnson County, Missouri, as an Expansion of Its Existing Service Area.	**File No. SA-2022-0014** Tariff No. YS-2022-0072

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: October 14, 2021 Effective Date: November 2, 2021

On July 23, 2021, Elm Hills Utility Operating Company (Elm Hills) 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 Johnson County, Missouri, as an addition to Elm Hills' existing service territories.

The Commission issued notice and set a deadline for intervention requests, but received none. On September 16, 2021, the Commission's Staff (Staff) filed its recommendation and memorandum to approve Elm Hills' request for a CCN, with specified conditions. Staff also recommended that Elm Hills submit revised sewer tariff sheets such that they may become effective on or before the effective date of a Commission order issuing a CCN in this case. Elm Hills responded on September 20, 2021, that it had no objection to Staff's recommendation or the proposed conditions therein. Elm Hills filed tariff sheets on October 4, 2021, to revise the service

area and legal description to conform to the service area recommended in Staff's memorandum. Those tariff sheets bear an effective date of November 3, 2021.

Elm Hills 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 requested CCN would allow Elm Hills to provide wastewater treatment service to four residential lots adjacent to Elm Hills' State Park Village service area. Elm Hills states it does not anticipate the need for external financing as it will extend its mains pursuant to its tariff provisions. The State Park Village Wastewater Treatment Facility provides sewer service to 176 residential customers located in a subdivision in Johnson County, Missouri. The current sewer rate for State Park Village is a flat rate of $99.88. The State Park Village sewer system is a gravity flow system that uses two lift stations in the collection system to convey wastewater to an integrated fixed film activated sludge plant with UV light for disinfection before it is discharged into a tributary of Clear Fork in Johnson County. The Company has completed multiple improvements to the sewer system to comply with Missouri Department of Natural Resources (DNR) regulations and to improve reliability.

Elm Hills has proposed that its approved monthly flat rate $99.88 rates on MO PSC No. 4 Sheet No. 24, applicable to certain named service areas, be applied to the expanded State Park Village service area for residential, commercial, industrial, and other public authority customers.

Ten days have passed since Staff filed its recommendation and no party has objected to Elm Hills' 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 promote the public interest.[3] These criteria are known as the Tartan Factors.[4]

There is a current and future need for sewer service because the subdivision is expanding and it is anticipated that more homes will be built that will require service. Elm Hills is qualified to provide the service as it is currently providing safe and reliable water service to approximately 137 customers and sewer service to approximately 680 customers throughout its Missouri service areas. Elm Hills has demonstrated that it has adequate resources to operate utility systems it owns, to acquire new systems, to

[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.
[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).

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 they arise. Elm Hills has the financial ability to provide the service and no financing approval is being requested. Elm Hills' State Park Village sewer system has the capacity to serve the additional customers. Elm Hills will be adopting existing rates established for the State Park Village service area. The proposal promotes the public interest as demonstrated by positive findings in in the first four Tartan Factors.

Based on the application and Staff's recommendations, 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 wastewater treatment service to residential lots adjacent to Elm Hills State Park Village service area in Johnson County Missouri. Further, Commission finds that the flat fee of $99.88 for sewer service is just and reasonable. Therefore, the Commission will grant Elm Hills' requested CCN, subject to the conditions described by Staff's recommendation. In consideration of the effective date of the tariff the Commission will make this order effective on November 2, 2021.

THE COMMISSION ORDERS THAT:

1. Elm Hills is granted a certificate of convenience and necessity to provide sewer service in the proposed State Park service area as modified in Staff's September 16, 2021 memorandum and attachments thereto.

2. Elm Hills shall adopt the current monthly residential flat rate of $99.88 for its State Park Village service area to apply to its expanded State Park Village service area.

3. Elm Hills shall distribute to any new State Park Village 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, as customers initiate service with Elm Hills.

4. 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 Elm Hills, including expenditures related to the certificated service area, in any later proceeding.

5. Elm Hills shall provide to the Customer Experience Department Staff a copy of the first bill it renders to a customer in the extended service area.

6. This order shall become effective on November 2, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of Confluence Rivers Utility Operating Company, Inc.; Hillcrest Utility Operating Company, Inc.; Elm Hills Utility Operating Company, Inc.; Osage Utility Operating Company, Inc.; Raccoon Creek Utility Operating Company, Inc.; and Indian Hills Utility Operating Company, Inc. for Approval of a Merger Whereby Confluence Rivers Will Be the Surviving Corporation, and of Related Transactions.	)	**File No. WM-2021-0412**

ORDER APPROVING MERGER

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

Since the application, along with conditions agreed upon by the parties, is unopposed, and no party has requested a hearing, no hearing need be held.

WATER

§4. Transfer, lease and sale

The Commission may approve a merger of water corporations if the merger is not detrimental to the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of October, 2021.

In the Matter of the Joint Application of Confluence Rivers Utility Operating Company, Inc.; Hillcrest Utility Operating Company, Inc.; Elm Hills Utility Operating Company, Inc.; Osage Utility Operating Company, Inc.; Raccoon Creek Utility Operating Company, Inc.; and Indian Hills Utility Operating Company, Inc. for Approval of a Merger Whereby Confluence Rivers Will Be the Surviving Corporation, and of Related Transactions.	)))))))))	**File No. WM-2021-0412[1]**

ORDER APPROVING MERGER

Issue Date: October 14, 2021 Effective Date: November 13, 2021

On June 1, 2021,[2] Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers or Confluence); Hillcrest Utility Operating Company, Inc. ("Hillcrest"); Elm Hills Utility Operating Company, Inc. ("Elm Hills"); Osage Utility Operating Company, Inc. ("Osage"); Raccoon Creek Utility Operating Company, Inc. ("Raccoon Creek); and Indian Hills Utility Operating Company, Inc. (Indian Hills) (collectively, "Joint Applicants") filed an application with the Missouri Public Service Commission (Commission) seeking approval of the merger of the joint applicants and approval of related transactions.

The Joint Applicants seek approval of a merger of the applicants, with Confluence Rivers to be the surviving company. The application seeks no new certificate of convenience and necessity. In the application, Confluence proposed to maintain separately the current tariffs for Confluence, Hillcrest, Elm Hills, Osage, Raccoon Creek,

[1] Files WM-2021-0412 and SM-2021-0413 were consolidated on July 29, with WM-2021-0412 designated as the lead case.
[2] Hereinafter, all date references will be to 2021 unless otherwise stated.

and the Indian Hills Service Area unless otherwise authorized by the Commission. Additionally, Confluence proposed to formally adopt Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills' tariffs upon Commission approval and consummation of the merger. Further, all customers served by the Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills divisions will receive services under the same rates, terms and conditions contained in the respective current tariffs until ordered by the Commission in a subsequent rate case or tariff filing. Likewise, all customers currently served by Confluence will receive services under the same rates, terms and conditions contained in the current Confluence tariffs until ordered by the Commission in a subsequent rate case or tariff filing.

Confluence Rivers provides water service to approximately 2,504 customers and sewer service to approximately 2,395 customers in Audrain, Boone, Christian, Cole, Franklin, Greene, Jefferson, Lincoln, Montgomery, Perry, Phelps, Polk, St. Francis, St. Louis, and Taney Counties, Missouri, pursuant to certificates of convenience and necessity. Hillcrest provides water service to approximately 247 customers and sewer service to approximately 252 customers in Cape Girardeau County, Missouri, pursuant to certificates of convenience and necessity. Elm Hills provides water service to approximately 137 customers and sewer service to approximately 680 customers in Pettis, Johnson, Ray, Clay and Clinton Counties, Missouri, pursuant to certificates of convenience and necessity. Osage provides water service to approximately 372 customers and sewer service to approximately 393 customers in Camden County, Missouri, pursuant to certificates of convenience and necessity. Raccoon Creek provides sewer service to approximately 529 customers in Johnson and Pettis Counties Missouri, pursuant to certificates of convenience and necessity. Indian Hills provides water service

to approximately 669 customers in Crawford County, Missouri, pursuant to a certificate of convenience and necessity. Collectively, the Joint Applicants provide water service to an estimated 9,800 persons, and sewer service to approximately 10,600 persons, in the State of Missouri.

Pursuant to the merger agreement, Confluence Rivers will acquire 100% of Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills, and Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills will be merged into Confluence Rivers, pursuant to Sections 347.700, et seq., RSMo. After the merger, Confluence Rivers will adopt and utilize Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills' existing rates, rules, regulations and other tariff provisions currently on file with and approved by the Commission, for the existing Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills service areas, and will continue to provide service to those customers under the applicable rules, regulations, and tariffs until such time as they may be modified according to law.

Additionally, the Joint Applicants requested a waiver of Commission Rule 20 CSR 4240-4.017(1)'s 60-day pre-filing notice requirement. Commission Rule 20 CSR 4240-4.017(1)(D) allows for waiver of the 60-day notice when good cause is established.

On June 2, the Commission issued its Order Directing Notice, Setting Intervention Date, and Directing Filing. No party requested intervention. Staff filed its Staff Recommendation (Recommendation) on September 14. Staff recommended the Commission approve the merger subject to eleven specified conditions. On September 23, the Office of Public Counsel ("OPC") filed a Response to Staff Recommendation. OPC recommended the Commission approve the merger subject to Staff's eleven conditions and two additional recommendations. On September 23, Staff

filed a Response to OPC. Therein, Staff clarified the depreciation rates to be applied to each system comprising the Confluence Rivers Utility Operating Company resulting from the merger and attached the applicable depreciation schedules, Attachments D and E, as clarified, to its September 23 pleading. On September 24, the joint applicants filed a Response to Staff's Recommendation. On September 28, the Commission issued an order requiring the parties to file a status report or other pleading clarifying the views of all parties on all of the recommendations and conditions stated by Staff, Confluence Rivers, and OPC. All parties have done so, and indicate their agreement about the recommendations and proposed conditions.

The Commission finds the merger, subject to the conditions mutually stated by the parties, is not detrimental to the public interest.[3] Accordingly, the Commission will approve the merger subject to those conditions. The Commission also finds the unobjected-to request for waiver from the 60-day notice requirement establishes good cause: No party has objected, and the application meets the 150-day no-communication-standard.[4] The Commission will grant the waiver. Since the application, along with conditions agreed upon by the parties, is unopposed, and no party has requested a hearing, no hearing need be held.[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 this merger in any later proceeding.

[3] Rule 20 CSR 4240.10-115 (1)(D).
[4] Rule 20 CSR 4240-4.015(10).
[5] *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 motion for waiver of the 60-day notice requirements of Commission Rule 20 CSR 4240-4.017(1) is granted.

2. The Joint Application is granted. The Commission approves the merger of Confluence Rivers, Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills, with Confluence Rivers to be the surviving corporation, subject to the following conditions:

a. Confluence shall submit an adoption notice tariff sheet for the existing tariffs within ten (10) days after closing on the assets and as a 30-day tariff filing, for the existing Confluence tariff;

b. Confluence shall keep its financial records for utility plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commission (NARUC) Uniform System of Accounts. Confluence shall conduct such record-keeping separately for each system.

c. Confluence shall continue to file its annual reports categorically by system;

d. Confluence shall track the cost savings associated with economies of scale, reduced administrative costs, and efficiencies associated with the consolidation, and report these values within its application for its next rate case;

e. Confluence's existing depreciation rates are approved, as set out in Attachments D and E to Staff's Response to OPC filed on September 23, 2021, for water and sewer utility plant accounts to apply to the Confluence service area assets;

f. Confluence shall distribute to all former customers of Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills a letter informing of the changes a customer will experience, including but not limited to: the Company name, payment changes, support phone number, support email, billing statements and the Company website;

g. Confluence shall distribute to all former customers of Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills prior to the first billing from Confluence 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 4240-13.040(3);

h. Confluence shall train all customer service representative on the changes that will occur concerning Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills;

i. Confluence shall provide the Customer Experience Department ("CXD") five sample billing statements from new Confluence customers that were former Hillcrest, Elm Hills, Osage, Raccoon Creek, and Indian Hills' customers within thirty (30) days of such billing;

j. Confluence shall provide CXD staff with a monthly call center statistical report regarding: calls offered to representatives, calls answered, abandoned call rate (ACR), and average speed of answer (ASA). This report should also include total number of customer service representatives employed by Confluence's 3rd Party Customer Service vendor. This report should start within thirty (30) days after the first full month after the merger;

k. Confluence shall file into the record in this case copies of the current LLC agreements (and any other agreements, such as operating, management or other contractually binding agreements executed in connection therewith) for the following entities: CSWR LLC, US Water Systems LLC, and any other entity created for the sole purpose of owning and managing CSWR LLC's Missouri water and sewer systems.

3. This order shall be effective on November 13, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Barbara Edwards,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2020-0252**
	)	
Evergy Missouri West, Inc.	)	
d/b/a Evergy Missouri West,	)	
	)	
Respondent	)	

REPORT AND ORDER

ELECTRIC

§14. Rules and regulations

The electric utility's tariff did not authorize it to require a customer to sign a release and indemnification to choose to have a non-standard meter installed at their residence.

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

While the Commission may determine, pursuant to a complaint, whether a public utility has violated a statute subject to the Commission's authority, or a Commission rule, order or tariff, the Commission does not have authority to award damages.

§2. Jurisdiction and powers

A tariff approved by the Commission becomes law and has the same force and effect as a statute enacted by the General Assembly.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Barbara Edwards, Complainant v. Evergy Missouri West, Inc. d/b/a Evergy Missouri West, Respondent	))))))))))	**File No. EC-2020-0252**

REPORT AND ORDER

Issue Date: October 14, 2021

Effective Date: November 13, 2021

APPEARANCES

BARBARA EDWARDS:

Barbara Edwards, 14708 S. Miller Road, Lone Jack, Missouri 64070.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Ron Irving, Associate Staff Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

OFFICE OF THE PUBLIC COUNSEL:

Marc Poston, Public Counsel, PO Box 2230, Jefferson City, Missouri 65102.

EVERGY MISSOURI WEST:

Roger Steiner and Robert Hack, PO Box 418679, 1200 Main Street, 19th Floor, Kansas City, Missouri 64141-9679.

Regulatory Law Judge: Ronald D. Pridgin

REPORT AND ORDER

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

Procedural History

On February 24, 2020, Barbara Edwards filed a formal complaint against Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy West").[1] Ms. Edwards alleged an array of violations of law in Evergy West's June 2019 installation of a new meter at her home in Lone Jack, Missouri. Ms. Edwards complains the meter was installed without her permission or knowledge and poses a fire risk. She alleges the meter is causing physical symptoms, is a threat to her health and constitutes "assault." In addition, she alleges overbilling, trespass, unlawful taking and "inverse condemnation," mail fraud, "extortion," privacy violations and violations of the Americans with Disabilities Act and Fair Housing Act. Ms. Edwards demands the removal and replacement of the meter at no cost and requests the Commission order Evergy West to pay damages.

[1] Ms. Edwards's complaint identified Evergy and Kansas City Power and Light. Notice of the complaint, issued by the Commission, incorrectly identified the respondent as Evergy Metro Inc. d/b/a Evergy Missouri Metro. *See Notice of Complaint and Order Setting Time for Answer and Staff Investigation and Report* (Feb. 25, 2020). Counsel entered an appearance for Evergy Metro on February 25, 2020, and on March 26, 2020, Evergy Missouri West filed an answer to Ms. Edwards's complaint and clarified that Ms. Edwards is a customer of Evergy Missouri West. *Answer, Affirmative Defenses, and Motion to Dismiss of Evergy Missouri West* (March 26, 2020).

On February 25, 2020, the Commission directed notice of a contested case under Chapter 536 of the Revised Statutes of Missouri (RSMo) and directed Evergy West to satisfy the complaint or file an answer.[2] The Commission directed the Staff of the Commission (Staff) to investigate the complaint and report its findings and recommendations to the Commission.

On April 26, 2020, Staff filed its report and recommendations, concluding Evergy West had not violated applicable statutes, Commission rules or the company's tariffs in relation to Ms. Edwards's complaint.

On June 8, 2020, the Commission designated the case a small formal complaint under Commission rules[3] and extended the 100-day deadline for filing of a recommended report and order in a small formal complaint case because adequate time did not exist to conduct a hearing before expiration of the period.

The Commission set a July 2020 evidentiary hearing in Kansas City, based on the parties' joint proposed procedural schedule.[4] Because of conditions in Jackson County, Missouri, during the COVID-19 pandemic, the Commission continued the hearing and convened a prehearing conference to discuss options for an evidentiary hearing.

On September 24, 2020, the Commission conducted an evidentiary hearing at the Commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. During the evidentiary hearing, the Commission admitted the testimony of nine witnesses and received 11 exhibits into evidence.[5] In addition to her own testimony,

[2] *Notice of Complaint and Order Setting Time for Answer and Staff Investigation and Report* (Feb. 25, 2020).
[3] 20 CSR 4240-2.070(15).
[4] As provided by Section 386.710, RSMo (2016), and Commission Rule 20 CSR 4240-2.010(10), the Office of the Public Counsel is party to all cases before the Commission. OPC filed no pleadings in this case and did not participate in the hearing or file post-hearing briefs.
[5] *Notice of Exhibits* (May 3, 2021).

Ms. Edwards presented testimony from witnesses Elizabeth Barris, Charles Bott, and Nancy Trosper. Evergy West presented witnesses Travis Lincoln, metering operations director; Brad Walsh, measurement technology supervisor; and Alisha Duarte, customer affairs advisor. Staff presented witnesses Amanda Coffer and Tammy Huber, Commission employees who contributed to Staff's investigation of Ms. Edwards's complaint. In addition, the Commission took official notice of Evergy West tariffs in effect as of the relevant time periods in this case.[6]

As discussed during the hearing,[7] the Commission directed Evergy West to file proposed exhibits comprised of (1) the billing statements for Ms. Edwards's Evergy West account, beginning January 2018 through and including September 11, 2020; and (2) a record of Ms. Edwards's electricity consumption on an annual basis from 2017, 2018, and 2019.[8] Evergy West filed such exhibits on October 9, 2020, and the objection period expired without objection.

On October 2, 2020, the exhibits offered at hearing were filed in the Commission's electronic filing and information system (EFIS), and the Commission issued its *Order Providing for Correction to Admitted and Filed Exhibits*, identifying such exhibits and providing a period for submission of any corrections. On October 23, 2020, Staff filed a Corrected Exhibit No. 201, which included a "Corrected Report of the Staff." No other corrections were filed. The Commission allowed for objection to admission of Corrected Exhibit No. 201, as well as admission of Original Exhibit No. 201. No objections were received.

[6] Transcript Vol. 3 at p. 46 (Hearing Sept. 24, 2020; filed Oct. 8, 2020).
[7] Transcript Vol. 4 at p. 277, 281 (In-camera session Sept. 24, 2020; filed Oct. 8, 2020); Transcript Vol. 3 at 319-320.
[8] *Order on Post-Hearing Briefs and Exhibits* (Sept. 28, 2020); *Order Amending Order on Post-Hearing Briefs and Exhibits* (Oct. 1, 2020); 20 CSR 4240-2.130(16) (presiding officer may require production of evidence upon any issue and authorize the filing of specific evidence to be included in the case record).

The Commission issued a Recommended Report and Order on September 22, 2021. Pursuant to 20 CSR 4240-2.070(15)(H), the parties were given ten days to file comments supporting or opposing the recommended order. Evergy filed comments challenging the Recommended Report and Order's findings regarding the Acknowledgement Form used by the company when a customer requests installation of a non-standard meter. Ms. Edwards filed an untimely response. The Commission has not changed this Report and Order in response to those comments.

Partial Dismissal of Complaint

Based on review of billing statements submitted by Evergy after the hearing, on October 30, 2020, the Commission suspended the procedural schedule and directed Staff to clarify its investigation of Evergy West's compliance, in relation to Ms. Edwards's account, with Commission rules governing billing and payment standards and billing adjustments.[9] On December 21, 2020, Staff reported its conclusion that Evergy West had violated Commission rules and approved tariffs.[10]

After allowing a period for response to Staff's supplemental report, the Commission on February 17, 2021, issued a procedural schedule and set a hearing on April 30, 2021, to receive testimony regarding certain exhibits offered after the hearing and other testimony and evidence concerning Staff's supplemental report. On April 12, 2021, on behalf of Staff, Ms. Edwards and Evergy West, Staff filed a request to cancel the evidentiary hearing based on an agreement between Ms. Edwards and Evergy West. The Commission issued notice of the proposed partial dismissal of the complaint and directed that any responses be filed no later than April 26, 2021. The Commission's notice advised

[9] *Order Suspending Briefing Schedule and Directing Staff Investigation and Report* (Oct. 30, 2020).
[10] *Supplemental Report of the Staff* (Dec. 21, 2020).

the parties that the Commission understood the partial settlement as intended to withdraw from Ms. Edwards's complaint and from Commission consideration all pending questions of Evergy West's compliance with Commission rules and company tariffs in relation to billing of Ms. Edwards's account.[11]

Based on Ms. Edwards's voluntary agreement to accept an account credit of $310.51 and Evergy West's voluntary offer to apply such a credit to Ms. Edwards's account, the Commission on May 3, 2021, dismissed with prejudice all pending questions of Evergy West's compliance with Commission rules and company tariffs concerning the billing of Ms. Edwards's account.[12]

Resolution of post-hearing proceedings

Following resolution of the issues raised by Staff's supplemental recommendation and expiration of the objection period for all proposed exhibits, the Commission on May 3, 2021, issued its *Notice of Exhibits* and reinstated the schedule for post-hearing briefs. On May 20, 2021, the parties filed post-hearing briefs, and the case was submitted to the Commission.[13]

Findings of Fact

1. Evergy Missouri West Inc. d/b/a Evergy Missouri West ("Evergy West") is an "electrical corporation" and "public utility" regulated by the Commission, pursuant to Section 386.020, RSMo (Cum. Supp. 2020).

[11] *Notice of Proposed Partial Dismissal of Complaint and Order Setting Time for Responses* (April 13, 2021).
[12] *Order Approving Partial Dismissal of Complaint* (May 3, 2021).
[13] 20 CSR 4240-2.150(1).

2. Evergy began providing residential electric service to Barbara Edwards in Lone Jack, Missouri[14] in May 1997.[15]

3. Ms. Edwards's property is fenced and gated.[16] On at least one occasion, an Evergy West meter reader had to use a ladder to scale the fence and access the property.[17]

4. Ms. Edwards was a "self-read" customer until Evergy West installed a new electrical meter at her residence on June 21, 2019,[18] while Ms. Edwards was away from the property on vacation.[19] The meter installed on Ms. Edwards' property is owned by Evergy West.[20]

5. As a self-read customer, Ms. Edwards periodically read the electrical meter installed at her property and reported the meter reading to the company.[21] Ms. Edwards typically used Evergy West's automated phone service to report meter readings and make payments.[22]

6. Evergy West serves about 250,000 to 300,000 customers in Missouri.[23] Of those customers, Evergy West's supervisor of measurement technology testified that about 50 customers were "self-read" customers as of the date of hearing.[24]

[14] Ms. Edwards's precise service address is designated confidential. The confidentiality of Ms. Edwards's address is preserved in this order because she stated concerns about security during the hearing.
[15] Transcript Vol. 3 at p. 231; *Answer, Affirmative Defenses, and Motion to Dismiss of Evergy Missouri West*, ¶ 3 (March 26, 2020).
[16] Transcript Vol. 3 at p. 112, 138, 152-153, 162.
[17] Transcript Vol. 3 at p. 138, 153.
[18] Transcript Vol. 3 at p. 231; Ex. 201: Corrected Staff Report, p. 6.
[19] Transcript Vol. 3 at p. 114, 119, 147.
[20] Transcript Vol. 3 at p. 230.
[21] Transcript Vol. 3 at p. 113, 231.
[22] Transcript Vol. 3 at p. 151-152.
[23] Transcript Vol. 3 at p. 245. The number of customer accounts is reported in annual reports filed with the Commission as required by Section 393.140(6), RSMo (2016).
[24] Transcript Vol. 3 at p. 232, 244.

7. Evergy West plans to eliminate "self-read" arrangements throughout its service area.[25] Evergy West's standard meters use advanced meter infrastructure (AMI),[26] which in this case use radio frequency technology (RF)[27] to allow two-way communication between the meter and the company (AMI Meters).[28] The company plans to use AMI Meters for "99.9 percent" of customers.[29]

8. The RF technology used by AMI Meters operates in a similar fashion to remote garage door openers or baby monitors, which also use radio frequencies to operate wirelessly.[30] The Federal Communications Commission has authorized the use of RF technology by AMI Meters.[31]

9. Radio frequency density varies by the type of device using RF technology. An FM radio has a slightly lower RF density than an AMI Meter, while cellphones and walkie-talkies are among devices with much higher RF density.[32]

10. RF technology allows AMI Meters to indicate anomalies in service, including power outages and potential fire detection.[33] With a properly equipped AMI Meter, Evergy West may disconnect service remotely without sending a technician to a location.[34]

11. AMI Meters typically collect electricity consumption information in 15-minute intervals and transmit the collected meter readings to Evergy West four to six times per

[25] Transcript Vol. 3 at p. 232-233, 236.
[26] Transcript Vol. 3 at p. 232, 240.
[27] Transcript Vol. 3 at p. 196-199.
[28] Transcript Vol. 3 at p. 240,
[29] Transcript Vol. 3 at p. 236.
[30] Transcript Vol. 3 at p. 196-197.
[31] Transcript Vol. 3 at p. 200.
[32] Transcript Vol. 3 at p. 202.
[33] Transcript Vol. 3 at p. 198-199.
[34] Transcript Vol. 3 at p. 242.

day.[35] AMI Meters can also transmit immediate reports of irregular events, such as power outages.[36]

12. AMI Meters transmit encrypted information that and does not identify individual customers.[37] AMI Meters are not able to report energy use attributable to specific appliances or activities.[38]

13. AMI Meters pose no greater risk of fire than a meter that uses non-digital technology.[39]

14. Devices that consume electricity produce "electromagnetic force" (EMF) when energized, or connected to power.[40]

15. The requirements for customers to opt out of the use of Evergy West's standard meter, an AMI Meter, are established by tariff approved by the Commission.[41] Evergy West customers who do not owe a past-due balance may "opt out" of the use of an AMI Meter by paying a one-time $150 fee, paying an additional $45 monthly fee, and signing a form that acknowledges those requirements under the tariff.[42]

16. A customer who opts out of a standard meter receives a standard meter that has been modified to disable the RF technology.[43]

[35] Transcript Vol. 3 at p. 200-201.
[36] Transcript Vol. 3 at p. 201.
[37] Transcript Vol. 3 at p. 201-202.
[38] Transcript Vol. 3 at p. 200-201.
[39] Transcript Vol. 3 at p. 203, 227.
[40] Transcript Vol. 3 at p. 198. Ms. Edwards's complaint addresses "electromagnetic fields." *See* Ex. 14C: Complaint, p. 1. 3. This order treats these terms interchangeably as did the parties throughout the hearing.
[41] Transcript Vol. 3 at p. 87.
[42] Transcript Vol. 3 at p. 87, 245-246, 250-251; *see also* Ex. 104: Evergy Opt-out Form.
[43] Transcript Vol. 3 at p. 239-240.

17. During the period at issue, Evergy West billing statements for Ms. Edwards's account billed separately for residential service and an exterior "private area light."[44] Ms. Edwards describes the exterior light as a "dawn-to-dusk" light.[45]

18. In 2017 and for part of 2018, Evergy West issued monthly forms for Ms. Edwards's account that provided instructions to read a meter and report the reading to the company by phone.[46] Evergy West did not issue monthly self-read forms for Ms. Edwards's account after a final self-read form dated April 4, 2018.[47]

19. Evergy West billing statements indicate customer meter reads on Ms. Edwards's account for 2018 billing on January 12, 2018; March 12, 2018; and April 13, 2018.[48] No customer-provided meter reads are indicated in Evergy West records for Ms. Edwards's account in 2019.[49]

20. Evergy West personnel obtained a meter read directly from the meter on Ms. Edwards's property in November 2017.[50] The company did not directly read Ms. Edwards's meter during 2018.[51] After November 2017, Evergy West next obtained a meter read directly from the meter on Ms. Edwards's property on June 21, 2019, when Evergy West personnel installed the new meter.[52]

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[44] Ex. 105: Billing Statements (Billing dates Jan. 17, 2017, through Sept. 11, 2020); *see also* Ex. 105A: Affidavit of Paige MacNair.
[45] Transcript Vol. 3 at p. 132.
[46] Ex. 105: Billing Statements; *see also* Transcript Vol. 3 at p. 113, 150-152.
[47] Ex. 105: Billing Statements.
[48] Ex. 105: Billing Statements (Billing dates Jan. 16, 2018, Feb. 14, 2018; March 14, 2018; April 16, 2018); Evergy West's measurement technology supervisor, Mr. Brad Walsh, incorrectly testified Ms. Edwards reported no self-reads of her meter in 2018. Transcript Vol. 3 at p. 233-234. Evergy West's customer affairs supervisor, Alicia Duarte, also testified incorrectly that Ms. Edwards did not provide any self-reads in 2018, before revising her testimony under questioning by Ms. Edwards. Transcript Vol. 4 at p. 258, 260-263.
[49] Ex. 105: Billing Statements.
[50] Transcript Vol. 4 at p. 309, 314.
[51] Ex. 200: Corrected Report of the Staff, p. 6-7.
[52] Ex. 200: Corrected Report of the Staff, p. 6-7; Transcript Vol. 4 at p. 253-254; Transcript Vol. 3 at p. 153, 231.

21. Beginning with the billing statement with a billing date of May 14, 2018, and continuing through the billing date of May 15, 2019, Evergy West estimated Ms. Edwards's electricity usage for her residence at 0 kilowatt hours (kWh).[53] During this period, Evergy West continued to bill Ms. Edwards for the exterior light.[54]

22. During the period from July 2018 through April 2019, Ms. Edwards periodically made payments in excess of the billed amounts, resulting in an account credit.[55] The May 15, 2019 billing statement issued to Ms. Edwards indicates an account credit of $780.58.[56]

23. Evergy West records indicate annual electricity consumption on Ms. Edwards's account of about 12,000 kWh in 2017; 14,000 kWh in 2018; and almost 14,000 kWh in 2019.[57]

24. Evergy West rebilled Ms. Edwards for underpayment of her electricity bill, based on the actual meter reading taken on June 21, 2019.[58] Despite the additional payments Ms. Edwards had made in excess of the amount billed from July 2018 through April 2019, a balance remained on Ms. Edwards's account after the rebilling.[59]

25. After returning to her home after a vacation in July 2019, Ms. Edwards experienced various physical conditions, including nausea, headache, insomnia, fatigue, "brain fog," dizziness, and changes in vision.[60]

[53] Ex. 105: Billing Statements.
[54] Ex. 105: Billing Statements.
[55] Ex. 105: Billing Statements (Billing dates July 13, 2018; Sept. 12, 2018; Nov. 13, 2018; Jan. 14, 2019; April 15, 2019; May 15, 2019).
[56] Ex. 105: Billing Statements (May 15, 2019).
[57] Ex. 106: Annual Usage history; Ex. 106A: Affidavit of Brad Walsh.
[58] Transcript Vol. 3 at p. 231; Ex. 105: Billing Statements (Multiple statements with June 25, 2019 Billing Date).
[59] Transcript Vol. 4 at p. 267-268, 308.
[60] Transcript Vol. 3 at p. 114, 116.

26. Ms. Edwards suspected the AMI Meter was causing her physical conditions after speaking with her pastor.[61]

27. Ms. Edwards contacted Evergy West and requested the company remove the AMI Meter and allow her to continue service as a "self-read" customer, using a meter that does not use RF technology.[62]

28. On July 15, 2019, Ms. Edwards contacted the Jackson County Sheriff and made a report that Evergy West had trespassed on her property and installed a new meter.[63]

29. In December 2019, a physician addressed a letter to Ms. Edwards, stating Ms. Edwards has been evaluated for anxiety associated with the AMI Meter.[64]

30. Ms. Edwards used the internet to research electromagnetic fields and spoke with people who advocate against EMF exposure.[65]

31. Ms. Edwards sleeps on her living room couch, rather than her bedroom, because the meter is located outside her house, on the other side of her bedroom wall.[66]

32. Ms. Edwards has refused to sign the "Residential Non-Standard Metering Service Acknowledgment Form" (Evergy Opt-out Form) presented to her by Evergy West as a requirement to opt out of use of the AMI METER, the company's standard meter. That form contains language indemnifying Evergy West from any damage the AMI meter might cause. That form further contains an attestation that the signatory agrees that he or she has read the form and agrees to the indemnification. [67]

[61] Transcript Vol. 3 at p. 103, 119-120, 146, 148-149.
[62] Transcript Vol. 3 at p. 120, 291; Ex. 201C: Original Staff Report: Case File Memorandum, p. 2-3,
[63] Transcript Vol. 3 at p. 148; Ex. 14C: Complaint, attachment: Offense/Incident Report (July 15, 2019).
[64] Transcript Vol. 3 at p. 130; Ex. 14C: Complaint, attachment: Swords Letter (Dec. 18, 2019).
[65] Transcript Vol. 3 at p. 77-78, 115-116, 126-127, 226, 321.
[66] Transcript Vol. 3 at p. 92-93, 104-105.
[67] Transcript Vol. 3 at p. 246-247; *See* Ex. 104: Evergy Opt-out Form.

Conclusions of Law

Preliminary matters

A. Section 386.480, RSMo (2016), limits the public disclosure of information furnished to the Commission, with the exception of "such matters as are specifically required to be open to public inspection" by the provisions of Chapters 386 and 610, RSMo.

B. The Commission may make information furnished to the Commission open to the public "on order of the Commission" and "in the course of a hearing or proceeding."[68]

C. Customer-specific information may be designated confidential under Commission rules.[69] The confidentiality provisions of Commission rules may be waived by the Commission for good cause.[70]

D. The Commission may take official notice to the same extent as the courts take judicial notice.[71]

E. As provided by the Commission's May 3, 2021 order, all allegations of noncompliance with Commission rules and company tariffs concerning Evergy West's billing of Ms. Edwards's account have been dismissed with prejudice, based on Ms. Edwards's voluntary agreement to accept an account credit and Evergy West's voluntary offer to apply such a credit to Ms. Edwards's account.

[68] Section 386.480, RSMo (2016).
[69] Commission Rule 20 CSR 4240-2.135.
[70] Commission Rule 20 CSR 4240-2.135(19).
[71] Section 536.070(6), RSMo (2016).

Commission jurisdiction – Burden of proof – Damages

F. Evergy West is an "electrical corporation" and a "public utility" as those terms are defined in Section 386.020 (Cum. Supp. 2020).

G. Evergy West is subject to the Commission's jurisdiction, supervision, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has jurisdiction over the manufacture, sale and distribution of electricity within the state.[72]

H. Section 386.390.1, RSMo (Cum. Supp. 2020), permits any person to make a complaint to the Commission "setting forth any act or thing done or omitted to be done" by any public utility "in violation ... of any provision of law subject to the [C]ommission's authority, of any rule promulgated by the [C]ommission, of any utility tariff, or of any order or decision of the [C]ommission."

I. In a complaint before the Commission, the person bringing the complaint has the burden of showing that a public utility has violated a provision of law subject to the Commission's authority, or a Commission rule, order or Commission-approved tariff.[73]

J. While the Commission may determine, pursuant to a complaint, whether a public utility has violated a statute subject to the Commission's authority, or a Commission rule, order or tariff, the Commission does not have authority to award damages.[74]

K. The determination of witness credibility is left to the Commission, "which is free to believe none, part, or all of the testimony."[75]

[72] *See* sections 386.040 and 386.250(1), RSMo (2016).
[73] *State ex rel. GS Techs. Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003).
[74] *State ex rel. GS Techs. Operating Co., Inc. v. Pub. Serv. Comm'n*, 116 S.W.3d 680, 696 (Mo. App. 2003).
[75] *Office of Pub. Counsel v. Evergy Mo. W., Inc*., 609 S.W.3d 857, 865 (Mo. App. W.D. 2020).

Duties created by statute and company tariff

L. Section 393.130.1 requires every electrical corporation to provide safe and adequate "service instrumentalities and facilities."

M. Among the general powers of the Commission is the authority, pursuant to Section 393.140(11), RSMo (2016), to require every electrical corporation to file with the Commission and to print and keep open to public inspection "schedules showing all rates and charges made, ... all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used."[76]

N. Such rate schedules and rules and regulations are commonly referred to as "tariffs."[77]

O. A tariff is a document that lists a public utility's services and the rates for those services.[78] Both a utility and its customers are presumed to know the contents and effect of published tariffs.[79]

P. Commission-approved tariffs may also include provisions governing regulations, practices and services that are prescribed by the Commission and applicable to the public utility and its customers.[80]

Q. A tariff approved by the Commission becomes law and has the same force and effect as a statute enacted by the General Assembly.[81]

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[76] *See also State ex rel. Inter-City Beverage Co., Inc. v. Pub. Serv. Comm'n*, 972 S.W.2d 397, 400 (Mo. App. W.D. 1998).
[77] In the context of cases before the Commission, the terms "tariffs" and "rate schedule" are synonymous. *See State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 311 S.W.3d 361, 364 n.3 (Mo. App. W.D. 2010).
[78] *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006) (quoting *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997)).
[79] *A.C. Jacobs & Co., Inc. v. Union Elec.* Co, 17 S.W.3d 579, 585 (Mo. App. W.D. 2000) (citing *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997)).
[80] *See* Section 386.270, RSMo (2016); *A.C. Jacobs & Co., Inc. v. Union Elec. Co.*, 17 S.W.3d 579, 581-85 (Mo. App. W.D. 2000) (approved tariff that is not subject to challenge is deemed lawful and reasonable and establishes rules governing utility's duty to customers).
[81] *Bauer v. Sw. Bell Tele. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997).

R. Evergy West's tariffs require the company to furnish and install a meter on customer property for billing purposes.[82]

S. Evergy West's tariffs require customers to allow the company access to customer premises for purposes of "inspecting, reading, repairing, installing, adjusting, caring for, or removing all of its apparatus used in connection with supplying electric service."[83]

T. Evergy West's tariffs require a customer who does not want service with a "standard digital meter" to sign a non-standard metering acknowledgment form "accepting all fees, requirements, and limitations" of the opt-out tariff, to pay a non-refundable $150 fee, and to pay a $45 monthly charge in addition to all other service fees.[84] The tariff provides that customers who do not have a past-due balance are eligible to request a non-standard meter.[85]

U. Evergy West's tariffs do not include a provision that requires Evergy West to allow customers to maintain self-read meter service on demand.

Decision

Preliminary matters

Limited disclosure of account information: Most of the documents filed in this case have been designated as "confidential" as permitted by the Commission's rules, which provide for the confidentiality of customer-specific information. Because it is

[82] Aquila Inc. d/b/a Aquila Networks, P.S.C. MO. No. 1 Original Sheet No. R-31 (effective April 22, 2004). Evergy West operates under some tariffs originally issued in the name of Aquila Inc. In 2008, the Commission recognized Aquila's name change to KCP&L Greater Missouri Operations Co. On Sept. 20, 2019, the Commission recognized KCP&L Greater Missouri Operations Co.'s name change to Evergy Missouri West, Inc. d/b/a Evergy Missouri West, effective October 7, 2019.
[83] Aquila Inc. d/b/a Aquila Networks, P.S.C. MO. No. 1 Original Sheet No. R-24 (effective April 22, 2004).
[84] KCP&L Greater Missouri Operations Co., P.S.C. MO. No. 1 Original Sheet No. R-33.2 (effective Dec. 6, 2018).
[85] KCP&L Greater Missouri Operations Co., P.S.C. MO. No. 1 Original Sheet No. R-33.2, Rule 5.05 Non-Standard Metering Service (effective Dec. 6, 2018).

necessary for the Commission to make specific findings of fact regarding Ms. Edwards's account history to decide Ms. Edwards's complaint, the Commission finds good cause exists to allow public disclosure of limited elements of Ms. Edwards's billing statements and other specific account information to the extent such information is expressly disclosed in this order. This order authorizes such disclosure, pursuant to the Commission's authority under Section 386.480, RSMo (2016), and 20 CSR 4240-2.135(19).

Complaint

The Commission on May 3, 2021, dismissed with prejudice all pending questions of Evergy West's compliance with Commission rules and company tariffs concerning the billing of Ms. Edwards's account.[86] Thus, Ms. Edwards's overbilling complaint is withdrawn from the Commission's consideration, consistent with the parties' voluntary agreement.

Among Ms. Edwards' remaining allegations, the Commission finds Evergy West exceeded its tariff by presenting Ms. Edwards with a waiver and release of liability not required by tariff to opt out of service with a "standard" meter. The Commission finds all other allegations must be denied because the remaining claims are not supported by competent and substantial evidence on the record and/or constitute claims that are outside the Commission's authority and may only be determined by a court.

The Commission's authority in a complaint case is limited to evaluating the company's compliance with statute within the Commission's purview, as well as compliance with Commission rules and the company's tariffs. Ms. Edwards's complaint about the Non-Standard Metering Service Acknowledgment Form requested by Evergy

[86] *Order Approving Partial Dismissal of Complaint* (May 3, 2021).

West as a requirement to opt out of standard metering raises an issue about whether the form complies with the company's tariff. The Commission finds that it does not.

Evergy West presented Ms. Edwards with a form labeled "Residential Non-Standard Metering Service Acknowledgment Form." The Evergy Opt-out Form includes a paragraph that requires the customer to agree to:

> release, hold harmless, and indemnify the Company in its entirety from and against any losses, liabilities, costs, expenses, suits, actions, and claims, including claims arising out of injuries to person or damage to property, caused by or in any way attributable to or related to the Customers's request for a Company Non-Standard Meter, the removal of the Company Standard Meter, and/or the subsequent installation of the Company Non-Standard Meter.[87]

The form requires a customer signature, attesting the customer has "read and understand the [form] and agree[s] to this Acknowledgment, release and indemnification."[88] Ms. Edwards refused to sign the form and objected to what she characterized as "extortion"[89] and an inappropriate attempt to compromise her "civil rights and legal rights."[90]

Evergy West's tariff establishes the requirements for customers who wish to opt out of standard metering service with an AMI Meter. The tariff requires such a customer to "sign and return" to Evergy West a "Residential Non-Standard Metering Service Acknowledgment Form ... accepting all fees, requirements, and limitations of" the tariff, which is designated "Rule 5.05."[91] Rule 5.05, as the tariff is labeled, does not state a requirement that an opt-out customer must sign a "release and indemnification" to receive

[87] Ex. 104: Evergy Opt-out Form.
[88] Ex. 104: Evergy Opt-out Form.
[89] Transcript Vol. 3 at p. 157-158; Ex. 14C: Complaint, p. 2, 5 (document is not page numbered; page numbering includes cover page).
[90] Transcript Vol. 3 at p. 88, 157-158.
[91] KCP&L Greater Missouri Operations Company P.S.C. MO. No. 1 Original Sheet No. R-33.2 (effective Dec. 6, 2018).

service with a non-standard meter, nor does the tariff mention “release and indemnification” of any kind. Under Rule 5.05, customers who wish to opt out are required to acknowledge the requirements of the tariff by submission of an “acknowledgment” form. Imposition of a “release and indemnification” exceeds the terms of Rule 5.05 and violates Evergy West’s Commission-approved tariff.

Ms. Edwards complains the meter was installed without her permission or knowledge and poses a fire risk. She alleges the meter is causing physical symptoms, is a threat to her health and constitutes “assault.” In addition, she alleges overbilling, trespass, unlawful taking and “inverse condemnation,” mail fraud, “extortion,” privacy violations, and violations of the Americans with Disabilities Act and Fair Housing Act. Ms. Edwards demands the removal and replacement of the meter at no cost and requests the Commission order Evergy West to pay damages.

To the extent that the remaining allegations in Ms. Edwards’s complaint assert an issue within the scope of the Commission’s authority, Ms. Edwards has not met her burden to show Evergy West violated statute, Commission rule or the company’s tariffs. The bulk of Ms. Edwards’s complaint is composed of claims that are outside the scope of the Commission’s authority to decide. In this regard, Ms. Edwards seeks relief the Commission does not have authority to grant.

The Commission finds the Evergy Opt-out Form, presented to Ms. Edwards as a condition of opting out of service with an AMI Meter, violates the company’s tariff. The remaining allegations in Ms. Edwards’ complaint are denied.

THE COMMISSION ORDERS THAT:

1. Because of the necessity of considering customer-specific account information to decide Ms. Edwards's complaint, that information is made public to the extent such information is disclosed in this order. Such disclosure is hereby authorized as provided by Section 386.480, RSMo (2016).

2. The liability release and waiver required by Evergy West in the Residential Non-Standard Metering Service Acknowledgment Form exceeds the terms of the company's tariff, which specifies the requirements a customer must satisfy to receive service with a non-standard meter. Evergy West shall revise and submit a Residential Non-Standard Metering Service Acknowledgment Form that complies with its tariff no later than January 18, 2022.

3. All other remaining allegations in Ms. Edwards's complaint are denied.

4. This Report and Order shall be effective November 13, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Pridgin, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Ameren Transmission Company of Illinois for a Certificate of Public Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a 138 kV Transmission Line and Associated Facilities in Perry and Cape Girardeau Counties, Missouri	))))))))	**File No. EA-2021-0087**

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

CERTIFICATES

§21. Grant or refusal of certificate generally
§42. Electric and power

The Commission granted Ameren Transmission Company of Illinois (ATXI) a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage approximately 15 miles of a new 138 kV transmission line in Perry and Cape Girardeau counties and a new 138 kV to 161 kV switching station at the southern end of the transmission line in Cape Girardeau County (known as the "Whipple Substation").

§21. Grant or refusal of certificate generally

The Commission found when granting a certificate of convenience and necessity that the transmission line and substation were needed to create a redundant transmission network to help support Citizens Electric Cooperative's load and also to support the interconnected Union Electric Company, d/b/a Ameren Missouri load served by Ameren Missouri's Wedekind Substation.

§22. Restrictions and conditions

The Commission granted a certificate of public convenience and necessity to Ameren Transmission Company of Illinois (ATXI) with numerous conditions as set out in the approved agreement of the parties. The conditions included numerous easement and rights-of-way acquisition procedures.

ELECTRIC

§3. Certificate of convenience and necessity

The Commission granted Ameren Transmission Company of Illinois (ATXI) a certificate of public convenience and necessity to construct, install, own, operate, maintain, and

otherwise control and manage approximately 15 miles of a new 138 kV transmission line in Perry and Cape Girardeau counties and a new 138 kV to 161 kV switching station at the southern end of the transmission line in Cape Girardeau County (known as the “Whipple Substation”).

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its Office in Jefferson City, Missouri on the 3rd day of November, 2021.

In the Matter of the Application of Ameren Transmission Company of Illinois for a Certificate of Public Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a 138 kV Transmission Line and Associated Facilities in Perry and Cape Girardeau Counties, Missouri	))))))))	**File No. EA-2021-0087**

ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT

Issue Date: November 3, 2021 Effective Date: December 3, 2021

On April 28, 2021, Ameren Transmission Company of Illinois ("ATXI") filed an application requesting a certificate of convenience and necessity ("CCN") to construct, install, own, operate, maintain, and otherwise control and manage approximately 15 miles of a new 138 kV transmission line in Perry and Cape Girardeau counties ("Transmission Line") and a new 138 kV to 161 kV switching station at the southern end of the transmission line in Cape Girardeau County ("Whipple Substation").[1] ATXI also requested waiver of certain Commission rules. ATXI filed direct testimony contemporaneously with its application.

The Commission issued notice of the application. On June 16, 2021, Terry and Mary Scholl, who own five parcels of land located in or around the planned route of the transmission were granted intervention. A procedural schedule was set and the Staff of the Commission, the Scholls, and ATXI filed Rebuttal testimony. At the request of the

[1] The Transmission Line and substation are sometimes collectively referred to as the "Project."

parties, the procedural schedule was suspended and on October 15, 2021, the parties filed a *Unanimous Stipulation and Agreement* ("Agreement"). The parties agree that ATXI should receive the requested CCN, subject to the conditions set out in the Agreement.

Based on the Commission's review of the application, testimony, and the Agreement, the Commission finds ATXI is engaged in the construction, ownership, and operation of interstate transmission lines that transmit electricity for the public use. Thus, ATXI is an electrical corporation and a public utility in Missouri, and the Commission has jurisdiction over ATXI and the proposed transmission line and substation.

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."[2] The Commission may also impose such conditions as it deems reasonable and necessary upon its grant of permission and approval.[3]

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

1) There must be a need for the service;

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

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

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

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

The transmission line and Whipple Substation are part of a larger development (known as the "ATXI-Wabash Development" or the "Limestone Ridge Project") being built

[2] Section 393.170, RSMo (Supp. 2020).
[3] Section 393.170.3, RSMo (Supp. 2020).
[4] *In re Tartan Energy Company*, 3 Mo.P.S.C.3d 173, 177 (1994).

in cooperation with Citizens Electric Cooperative (Citizens Electric) and the Wabash Valley Power Alliance (Wabash Valley).[5] Citizens is the local distribution cooperative in the area of the Project and Wabash Valley is the affiliated generation and transmission cooperative that serves Citizens Electric with power and transmission needs.[6]

The transmission line and substation are needed to create a redundant transmission network to help support Citizens Electric's load and also to support the interconnected Union Electric Company, d/b/a Ameren Missouri load served by Ameren Missouri's Wedekind Substation.[7] ATXI is qualified and financially able to build the transmission line and substation.[8] The transmission line and substation are also economically feasible as the ATXI revenue requirement associated with the Project will be recovered from all transmission customers subject to the Joint Pricing Zone Revenue Agreement between Ameren Missouri, ATXI, and Wabash Valley as approved by the Federal Energy Regulatory Commission (FERC).[9] Finally, the Project, as conditioned by the terms of the Agreement, is in the public interest because transmission upgrades in this area of southeast Missouri will "improve energy reliability and operational flexibility, provide additional capacity to local manufacturing facilities and allow for efficient future expansion of the transmission grid."[10]

Accordingly, the Commission finds that the transmission line and substation are necessary and convenient for the public service, and ATXI has satisfied the *Tartan*

[5] Application, (filed June 4, 2021), paragraph 6; and Staff Rebuttal Report, (filed August 24, 2021), page 2.
[6] Application, (filed June 4, 2021), para. 6.
[7] Application, (filed June 4, 2021), para. 7. *See also*, Staff Rebuttal Report, (filed August 24, 2021), pages 3-10.
[8] Staff Rebuttal Report, (filed August 24, 2021), pages 10-12.
[9] Staff Rebuttal Report, (filed August 24, 2021), pages 12-14.
[10] Direct Testimony of Sean Black, (filed April 28, 2021), page 19, lines 7-9. *See also*, Staff Rebuttal Report, (filed August 24, 2021), pages 2-3 and 14; and Application, (filed June 4, 2021), para. 7.

criteria. The Commission has considered the conditions set out in the *Unanimous Stipulation and Agreement*[11] and finds that they are reasonable and necessary. The Commission will approve the Agreement, order ATXI to comply with these conditions in exercising the authority granted by this order, and grant the application.

Additionally, because ATXI will not provide retail service to end-use customers and will not be rate-regulated by the Commission, the Commission finds good cause to waive the depreciation study requirement of 20 CSR 4240-3.175; the reporting requirements of 20 CSR 4240-3.190(1), (2), and 3(A)-(D); the annual reporting requirement of 20 CSR 4240-10.145; and the rate schedule filing requirement of 20 CSR 4240-20.105.

THE COMMISSION ORDERS THAT:

1. The *Unanimous Stipulation and Agreement* filed on October 15, 2021, attached to this order, is approved. The attached Agreement is incorporated into this order as if set forth herein. The parties are ordered to comply with the provisions of the Agreement.

2. The application for a certificate of convenience and necessity filed by ATXI on April 28, 2021, is granted. The conditions outlined in paragraphs 3-11 below are reasonable and necessary, and ATXI is ordered to comply with these conditions in exercising the authority granted by this order.

3. Throughout the right-of-way acquisition process, ATXI will use all reasonable efforts to follow the route depicted in Dan Schmidt's Direct Testimony and described in Schedule CH-01 (the "Final Proposed Route"). But ATXI will be allowed to deviate from the Final Proposed Route in two scenarios:

[11] Agreement, paras. 9-12

a. First, if surveys or testing do not necessitate a deviation, ATXI may deviate from the Final Proposed Route on a particular parcel if ATXI and the landowner on which the deviation will run agree. Either ATXI or landowner may initiate such a request to deviate.

b. Second, if ATXI determines that surveys or testing require a deviation, ATXI will negotiate in good faith with the affected landowner and if agreement can be reached, ATXI may deviate from the Final Proposed Route on that parcel, as agreed with the affected landowner.

With respect to any parcel other than the identified parcels on the Final Proposed Route where ATXI desires to locate the line, whether because testing or surveys necessitate acquisition of an easement on that parcel or for other reasons (e.g., a request from adjacent landowners), ATXI will negotiate in good faith with the landowner of the affected parcel over which ATXI has determined an easement is needed or desired and, if agreement is reached, may deviate from the Final Proposed Route by locating the line on the affected parcel but will notify the Commission of the deviation and parcels affected prior to construction on that parcel.

If testing or surveys necessitate acquisition of an easement on such other parcel and agreement is not reached, despite good faith negotiations, ATXI will file a request with the Commission to allow it to deviate from the Final Proposed Route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor’s records in the county where the affected parcel is located, or at such other address that

has been provided to ATXI by the owner(s). ATXI shall fully explain in that request why ATXI determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved is given to the owner, Staff, and OPC, as well as an opportunity to respond, the Commission will grant or deny the request.

4. Absent a voluntary agreement for the purchase of the property rights, the Transmission Line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement requiring—for electrical code compliance purposes—the owners to move or relocate from the property.

5. Prior to the commencement of construction on a parcel, ATXI will secure an easement, which will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for each affected parcel. ATXI commits to working in good faith with landowners to address their issues and concerns, to the extent practicable, during the easement acquisition phase of the Project. ATXI will track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the Project, ATXI will file a copy of the spreadsheet with the Commission, to which a map will be attached. For each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

6. ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set forth in Exhibit 1, ATXI's Standards and Procedures for the

Limestone Ridge Project ("Standards and Procedures") attached to the Agreement. Exhibit 1 is generally consistent with Schedule CH-03, attached to ATXI Witness Craig Hiser's Direct Testimony. However, Exhibit 1 includes minor typographical corrections and removes the word "agricultural" from the term "agricultural lands" so that the Standards and Procedures explicitly apply to all privately owned land.

7. Prior to engaging in vegetation clearing of the easement corridor, ATXI will offer landowners a reasonable opportunity to harvest any marketable timber. Regarding the Scholls' parcels, ATXI and the Scholls agree to communicate in good faith regarding their individual concerns regarding tree removal.

8. Subject to any applicable federal, state, tribal, and local laws, statutes, regulations, or rules governing treatment of and property rights associated with historical artifacts, ATXI shall, when legally permissible, provide to the Scholls any historical artifacts found during the course of ATXI's construction, clearing, maintenance, or repair of the right of way on the Scholls' property. The Parties recognize that federal, state, tribal, and local laws, statutes, regulations, or rules may restrict ATXI's and the Scholls' ability to recover or possess historical artifacts. ATXI and the Scholls shall coordinate with the Missouri State Historical Preservation Office ("SHPO") and/or any other federal, state, tribal, or local agencies that have authority over recovery or possession of any historical artifact found or discovered. This paragraph does not obligate or require ATXI to look for, excavate, or recover any historical artifacts on the Scholls' property other than to the extent required by federal, state, tribal, and local laws, statutes, regulations, or rules. Nor does this paragraph obligate ATXI to take any action against any governmental agency or any other party that attempts to restrict the Scholls from receiving the historical artifacts (e.g. an agency decision that ATXI must provide historical artifacts to tribal authorities).

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

10. ATXI shall file with the Commission all pipeline interference studies performed as well as any agreement between ATXI and the pipeline companies that have assets being crossed or assets being paralleled by the Limestone Ridge Project.

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

12. The following rules are waived for ATXI: the depreciation study requirement of 20 CSR 4240-3.175; the reporting requirements of 20 CSR 4240-3.190(1), (2), and 3(A)-(D); the annual reporting requirement of 20 CSR 4240-10.145; and the rate schedule filing requirement of 20 CSR 4240-20.

13. This order shall become effective on December 3, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Deputy Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Ameren Transmission Company of Illinois for a Certificate of Public Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a 138 kV Transmission Line and associated facilities in Perry and Cape Girardeau Counties, Missouri	)	Case No. EA-2021-0087

UNANIMOUS SETTLEMENT AGREEMENT

Ameren Transmission Company of Illinois ("ATXI"), Staff of the Missouri Public Service Commission ("Staff"), Office of the Public Counsel ("OPC"), and Terry and Mary Scholl (the "Scholls", and collectively, the "Parties"), hereby file their Unanimous Settlement Agreement resolving all contested issues ("Settlement") relating to ATXI's application seeking a certificate of convenience and necessity to construct, install, own, operate, maintain and otherwise control and manage approximately 15 miles of a new 138 kV transmission line and a new 138 kV to 161 kV switching station ("Application").

The Parties hereby move that the Commission adopt the settlement terms included in this Settlement and state as follows:

Background

1. On April 28, 2021, ATXI filed its Application to construct, install, own, operate, maintain, and otherwise control and manage a 138 kV transmission line ("Transmission Line") in Perry and Cape Girardeau Counties and a new substation at the southern end of the Transmission

Line in Cape Girardeau County (the "Whipple Substation", and collectively with the Transmission Line, the "Project").[1]

2. On June 4, 2021, the Scholls, who own five parcels located in or around the planned route of the Transmission Line, applied to intervene in this matter. Their application was granted on June 16, 2021.

3. ATXI filed direct testimony in support of the its Application from Sean Black, James Jontry, Jessica Timmerman, Curtiss Frazier, Craig Hiser, Dan Schmidt, and Emily Hyland.

4. The Scholls filed Rebuttal Testimony on August 24, 2021. Also on August 24, 2021, Staff filed its Rebuttal Report.

5. ATXI filed Rebuttal Testimony from Craig Hiser and James Jontry on September 14, 2021.

6. The Parties participated in a settlement conference on September 27, 2021 at which they reached preliminary agreement to resolve all contested issues relating to the Application.

7. ATXI filed a Motion to Suspend the Procedural Schedule on September 30, 2021 to allow the Parties time to prepare this Settlement, which was granted by the Commission on the same day.

Settlement Terms

8. The Parties agree to the following settlement terms ("Settlement Terms"). Subject to the Commission's approval and adoption of these Settlement terms, the Parties recommend that the Commission approve ATXI's Application:

[1] As described in its Application, as part of the current Transmission Line, ATXI will design and install structures that are capable of being outfitted with an additional transmission circuit at a voltage of up to 345 kV in the future. However, ATXI is not seeking approval in this case to install the second 345 kV circuit.

9. Throughout the right-of-way acquisition process, ATXI will use all reasonable efforts to follow the route depicted in Dan Schmidt's Direct Testimony and described in Schedule CH-01 (the "Final Proposed Route"). But ATXI will be allowed to deviate from the Final Proposed Route in two scenarios:

a. First, if surveys or testing do not necessitate a deviation, ATXI may deviate from the Final Proposed Route on a particular parcel if ATXI and the landowner on which the deviation will run agree. Either ATXI or landowner may initiate such a request to deviate.

b. Second, if ATXI determines that surveys or testing require a deviation, ATXI will negotiate in good faith with the affected landowner and if agreement can be reached, ATXI may deviate from the Final Proposed Route on that parcel, as agreed with the affected landowner.

With respect to any parcel other than the identified parcels on the Final Proposed Route where ATXI desires to locate the line, whether because testing or surveys necessitate acquisition of an easement on that parcel or for other reasons (e.g., a request from adjacent landowners), ATXI will negotiate in good faith with the landowner of the affected parcel over which ATXI has determined an easement is needed or desired and, if agreement is reached, may deviate from the Final Proposed Route by locating the line on the affected parcel but will notify the Commission of the deviation and parcels affected prior to construction on that parcel.

If testing or surveys necessitate acquisition of an easement on such other parcel and agreement is not reached, despite good faith negotiations, ATXI will file a request with the Commission to allow it to deviate from the Final Proposed Route onto the affected parcel

and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to ATXI by the owner(s). ATXI shall fully explain in that request why ATXI determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved is given to the owner, Staff, and OPC, as well as an opportunity to respond, the Commission will grant or deny the request.

10. Absent a voluntary agreement for the purchase of the property rights, the Transmission Line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement requiring—for electrical code compliance purposes—the owners to move or relocate from the property.

11. Prior to the commencement of construction on a parcel, ATXI will secure an easement, which will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for each affected parcel. ATXI commits to working in good faith with landowners to address their issues and concerns, to the extent practicable, during the easement acquisition phase of the Project. ATXI will track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the Project, ATXI will file a copy of the spreadsheet with the Commission,

to which a map will be attached. For each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

12. ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set forth in the attached Exhibit 1, ATXI's Standards and Procedures for the Limestone Ridge Project ("Standards and Procedures"). Exhibit 1 is generally consistent with Schedule CH-03, attached to Ameren Witness Craig Hiser's Direct Testimony. However, Exhibit 1 includes minor typographical corrections and removes the word "agricultural" from the term "agricultural lands" so that the Standards and Procedures explicitly apply to all privately owned land.

13. Prior to engaging in vegetation clearing of the easement corridor, ATXI will offer landowners a reasonable opportunity to harvest any marketable timber. Regarding the Scholls parcels, ATXI and the Scholls agree to communicate in good faith regarding their individual concerns regarding tree removal.

14. Subject to any applicable federal, state, tribal, and local laws, statutes, regulations, or rules governing treatment of and property rights associated with historical artifacts, ATXI shall, when legally permissible, provide to the Scholls any historical artifacts found during the course of ATXI's construction, clearing, maintenance, or repair of the right of way on the Scholls' Property. The Parties recognize that federal, state, tribal, and local laws, statutes, regulations, or rules may restrict ATXI's and the Scholls' ability to recover or possess historical artifacts. ATXI and the Scholls shall coordinate with the Missouri State Historical Preservation Office ("SHPO") and/or any other federal, state, tribal, or local agencies that have authority over recovery or possession of any historical artifact found or discovered. This paragraph does not obligate or require ATXI to look for, excavate, or recover any historical artifacts on the Scholls property other than to the extent required by federal, state, tribal, and local laws, statutes, regulations, or rules. Nor does this

paragraph obligate ATXI to take any action against any governmental agency or any other party that attempts to restrict the Scholls from receiving the historical artifacts (e.g. an agency decision that ATXI must provide historical artifacts to tribal authorities).

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

16. ATXI shall file with the Commission all pipeline interference studies performed as well as any agreement between ATXI and the pipeline companies that have assets being crossed or assets being paralleled by the Limestone Ridge Project.

17. ATXI shall file with the Commission the annual report it files with the Federal Energy Regulatory Commission.

Miscellaneous Terms

18. This Settlement has resulted from extensive negotiations among the Parties and the terms hereof are interdependent. If the Commission does not approve this Settlement unconditionally and without modification, then this Settlement shall be void and no Party shall be bound by any of the agreements or provisions hereof, except as explicitly provided herein.

19. If the Commission does not unconditionally approve this Settlement without modification, and notwithstanding the provision herein that it shall become void, neither this Settlement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with §536.080, RSMo., or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Settlement had not been

presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Settlement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

20. In the event the Commission unconditionally accepts the specific terms of this Settlement without modification, the Parties waive the following rights only as to the issues resolved herein: 1) their respective rights to present oral argument and written briefs pursuant to §536.080.1, RSMo.; 2) their respective rights to seek rehearing, pursuant to §386.500, RSMo.; and 3) their respective rights to judicial review pursuant to §386.510, RSMo. This waiver applies only to a final unappealed Commission order issued in this proceeding unconditionally approving this Settlement and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding or any matters not explicitly addressed by this Settlement.

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Conclusion

WHEREFORE, as set forth above, the Parties request that the Commission approve the Application subject to the Settlement Terms listed in Paragraphs 8-17 of this Settlement Agreement. The Parties request such additional relief as is just and proper under the circumstances.

Respectfully submitted,

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ATTORNEY FOR OFFICE OF THE PUBLIC COUNSEL

ATXI's Standards and Procedures for Construction, Repair and Maintenance of Right-of-Way for the Limestone Ridge Project

I. Applicability

The following standards and procedures apply to construction, maintenance and repair activities occurring partially or wholly on privately owned land affected by the activities of Ameren Transmission Company of Illinois ("ATXI") as part of the Limestone Ridge Project ("Project"). They do not apply to such activities occurring on highway or railroad right-of-way or on other publicly owned land. ATXI will, however, adhere to the standards relating to the repair of drainage tile (identified below) regardless of where drainage tile is encountered. To the extent the standards and procedures conflict with an easement or other right-of-way agreement as between ATXI and the landowner, the language in the easement or other agreement shall govern.

All standards and procedures are subject to modification through negotiation by landowners and a designated representative of ATXI, provided such changes are negotiated in advance of any construction, maintenance or repairs.

ATXI will implement the standards and procedures to the extent that they do not conflict with the requirements of any applicable federal, state, or local rules, regulations, or other permits that apply to the Project. If any standard or procedure is held to be unenforceable, no other provision shall be affected by the holding, and the remaining standards and procedures shall remain in effect.

II. Right-of-Way Acquisition

Every landowner from whom ATXI requires an easement or other right-of-way agreement will be contacted personally, and ATXI will negotiate with each such landowner in good faith on the terms and conditions of the easement or agreement, its location, and compensation therefor. For easements, landowners will be shown a specific, surveyed location for the easement and be provided ATXI's standard template.

ATXI's right-of-way acquisition policies and practices will not change regardless of whether ATXI does or does not yet possess a Certificate of Convenience and Necessity from the Commission.

III. Construction and Clearing

Prior to construction, ATXI will notify all landowners in writing of the name and telephone number of ATXI's designated representative so that they may contact the designated representative with questions or concerns before, during, or after construction, including, but not limited to concerns over inferior work being performed on the landowner's property. Such notice will also advise the landowners of the expected start and end dates of construction on their properties. Landowners will be contacted in person, by phone and/or in writing at least 24 hours prior to the beginning of construction and provided a name and phone number of an Ameren Services real estate employee or contractor to contact if they have any questions or concerns. Following construction, landowners will be contacted to settle crop, land restoration, or other damages.

1. Prior to construction, ATXI's designated representative will personally contact each landowner (or at least one owner of any parcel with multiple owners) to discuss access to the right-of-way on their parcel and any special concerns or requests about which the landowner desires to make ATXI aware.

2. During construction, and through the completion of clean-up of the right-of-way, ATXI's designated representative will be on-site, meaning at or in the vicinity of the route, or on-call, to respond to landowner questions or concerns.

3. If trees are to be removed from privately owned land, ATXI or their representative will consult with the landowner to see if there are trees of commercial or other value to the landowner. If there are trees of commercial or other value to the landowner, ATXI will allow the landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to commencement of land clearing, such negotiation to include a reasonable period of time in advance of construction for landowner to harvest any timber the landowner desires to harvest and sell. If requested by the landowner, ATXI will cut logs 12" in diameter or more into 10 to 20 foot lengths and stack them along the edge of the right-of-way for handling by the landowner. ATXI's intent is to mulch or windrow trees and brush of no value on site; however, it will follow the landowner's desires, if reasonable, regarding the disposition of trees and brush of no value to the landowner by windrowing, burial, chipping or complete removal of affected property.

4. Stumps will be cut as close to the ground as practical, but in any event will be left no more than 4" above grade as terrain allows.

5. Unless otherwise directed by the landowner, stumps will be treated to prevent regrowth.

6. Unless the landowner specifically states that he does not want the area seeded, disturbed areas in non-crop producing land will be restored using a native plant mix consisting of native grasses and forbs. Deep-rooted native species will be used based on their abilities to enhance wildlife, soil permeability, pollutant filtering, and their reduced needs for fertilizer, herbicides, irrigation, and mowing. In addition, the native grasses and forbs will be selected for the region and site conditions. Before seeding the disturbed areas will be prepared to allow for good seed to soil contact to promote seed-germination and early growth. The native seed mix will be applied with any needed soil amenities and a cover crop consisting of oats or winter wheat depending on the time of year the seed is applied. The seeded area will be covered to protect the seed from being dislodged by storm events or erosion. Seeding cover may include crimped straw, erosion blanket, spray on erosion control products, or other methods depending on slopes or existing erosion conditions. Final restoration activities will be considered achieved when 70% or greater of the restored area has established permanent (not cover crop) vegetation with no large barren areas.

7. Best management practices will be followed to minimize erosion, with the particular practice employed at given location depending upon terrain, soil, and other relevant factors.

8. If necessary for construction, ATXI will reimburse landowner for their time required to move livestock from one location to another and, where feasible, may install temporary fences or gates to keep livestock out of the construction area.

9. Gates will be securely closed after use.

10. Should ATXI damage a gate, ATXI will repair that damage.

11. If ATXI installs a new gate, ATXI will either remove it after construction and repair the fence to its pre-construction condition, or will maintain the gate so that is it secure against the escape of livestock.

12. ATXI will utilize design techniques intended to minimize corona.

13. Should a landowner experience radio or tv interference issues believed by the landowner to be attributed to ATXI's line, ATXI will work with the landowner in good faith to identify if ATXI is the root cause of the problem, and if so to attempt to resolve the issue.

14. If tiling is practiced in the area where a transmission line is to be constructed, ATXI will send a letter to all landowners to request information as to whether support structure locations will interfere with any drainage tile.

If ATXI is advised of possible drainage tile interference with a support structure location, then ATXI will conduct an engineering evaluation to determine if the support structure can be relocated to avoid interference with the tile. ATXI will make its best efforts to relocate the support structure if the engineering integrity of the electric transmission line can be maintained.

If the tile is intercepted and needs to be relocated, ATXI shall negotiate a relocation agreement with landowner. In no case shall the length of the rerouted tile exceed 125% of the length of original tile line that will be replaced.

If the tile line is intercepted and repair is necessary, such repair shall be performed in accordance with local requirements (if any), and if no requirements are available, ATXI shall reference the USDA Natural Resources conservation Service Conservation Practice Standard document, "SUBSURFACE DRAIN"- CODE 606, to aid in the repair of the damaged tile.

15. ATXI will make every reasonable effort to repair, replace, or pay to repair or replace damaged private property within 45 calendar days, weather and landowner permitting, after the transmission line has been constructed across the affected property. If the landowner is paid for any work that is needed to correct damage to his/her property, ATXI will pay the ongoing commercial rate for such work. After construction is completed, ATXI will make reasonable efforts to contact each landowner personally to ensure construction and clean-up was done properly, to discuss any concerns, and to settle any damages that may have occurred. ATXI will restore all disturbed slopes and terraces to their original condition following construction.

16. In order to minimize the impact of soil compaction and rutting, ATXI, unless the landowner opts to do the restoration work, will deep rip to a depth of 18 inches all cropland, which has been traversed by construction equipment, unless the landowner specifies other arrangements that are acceptable to ATXI.

ATXI will deep rip to a depth of 12 inches all pasture and hayland that has been traversed by construction equipment to alleviate compaction impacts, unless the landowner specifies other arrangements that are acceptable to ATXI.

ATXI will deep rip or pay to have deep ripped all compacted and rutted soil, weather and landowner permitting, after the transmission line has been constructed across any affected property.

17. If desired by the landowner, ATXI will agree to apply fertilizer and lime to land disturbed by construction, weather permitting, within a mutually agreed time frame following the completion of final construction to help restore the fertility of disturbed soils and enhance the establishment of a vegetative cover to control soil erosion.

18. ATXI will remove from the landowner's property all material that was not there before construction commenced and which is not an integral part of the transmission line. (Note: Such material to be removed would also include litter generated by the construction crews).

19. ATXI will work with landowners to prevent or correct excessive erosion on all lands disturbed by construction. ATXI will use all reasonable efforts to ensure that erosion control measures are implemented, or pay the landowner to do so, within 45 days, weather and landowner permitting, following the construction of the transmission line across any affected property subject to erosion.

20. Excess soil material will be generated from the area displaced by the foundation for the support structures. ATXI will remove the excess soil material in tillable and pasture lands.

21. All ATXI contractors will be required to carry and maintain a minimum of one million dollars of liability insurance available to respond to damage claims of landowners. All contractors will be required to respond to any landowner damage claims within 24 hours. All contractors will be required to have all licenses required by state, federal, or local law.

IV. Maintenance and Repair

1. With regard to future maintenance or repair and right-of-way maintenance after construction is completed, ATXI will make reasonable efforts to contact landowners prior to entry onto the right-of-way on their property to advise the landowners of ATXI's presence, particularly if access is near their residence.

2. ATXI will remain liable to correct damages to private property beyond the construction of the transmission line, to associated future construction, maintenance, and repairs as well.

3. All right-of-way vegetation management line clearance contractors will employ a general foreman who is a certified arborist.

4. If herbicides are used, only herbicides registered with EPA and any applicable state authorities will be used, and herbicides will be used in strict compliance with all labeling directions.

5. To the extent maintenance outage availability permits, routine maintenance will not be planned during wet conditions so as to minimize rutting.

6. Existing access roads will be used to access the right-of-way wherever available.

7. Prior to commencing any scheduled vegetation management on the right-of-way, ATXI or an ATXI representative, upon request, will meet personally with all landowners who wish to discuss ATXI's vegetation management program and plans for their property and to determine if the landowner does or does not want herbicides used on their property. If the landowner does not want herbicides used, they will not be used.

V. Indemnity

ATXI will indemnify all owners of private land upon which such transmission line is installed, their heirs, successors, legal representatives, and assigns from and against all claims, injuries, suits, damages, costs, losses, and reasonable expenses resulting from or arising out of the construction, maintenance, removal, repair, and use of such transmission line, whether heretofore or hereafter installed, including damage to such transmission line or any of its appurtenances, to the extent such claims, injuries, suits, damages, costs, losses, and expenses are caused by the negligence or willful misconduct of ATXI, its employees, agents or contractors.

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 12th day of October, 2021, and electronically delivered to all counsel of record.

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and around the City of Garden City, Missouri	)))))))	**File No. WA-2021-0391**

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

CERTIFICATES

§4. Jurisdiction and powers generally

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

WATER

§2. 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 at its Office in Jefferson City, Missouri on the 3rd day of November, 2021.

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and around the City of Garden City, Missouri	)))))))	**File No. WA-2021-0391**

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

Issue Date: November 3, 2021 Effective Date: December 3, 2021

Procedural History

On May 7, 2021, Missouri-American Water Company (MAWC) filed the above-referenced application. The application seeks, among other things, authority for MAWC to acquire and operate the assets of a municipal water and sewer system in Garden City, Missouri. Garden City overwhelmingly approved selling those assets to MAWC in a November 3, 2020 election.

MAWC also asks for a Certificate of Convenience and Necessity ("CCN") to install, own, acquire, construct, operate, control, manage, and maintain those water and sewer systems in Garden City. MAWC is a "water corporation," a "sewer corporation," and "public utility" as those terms are defined in Section 386.020, RSMo (2016), and is subject to the jurisdiction of the Commission. If the Commission approves MAWC's application,

MAWC would provide water service for Garden City's 725 customers, and sewer service for Garden City's 691 sewer customers.[1]

In addition, MAWC requests the Commission permit it to use Section 393.320 RSMo to establish the rate base of the Garden City water and sewer systems. Finally, MAWC asks the Commission to waive the 60-day notice requirement MAWC would otherwise have to give before filing this case.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On October 6, 2021, the Commission's Staff filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions. MAWC responded on October 25, 2021, accepting Staff's conditions.

Commission Rule 20 CSR 4240-2.080(13) allows parties ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission issued no order to the contrary of that rule and no party objected to MAWC's application or Staff's recommendation.

Discussion

Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."[2] The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in *In Re Intercon Gas, Inc.*[3]

[1] The customer counts are approximate.
[2] Section 393.170.3, RSMo.
[3] 30 Mo P.S.C. (N.S.) 554, 561 (1991).

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.[4]

There is a need for the service, as the residents of Garden City currently make use of the existing water and sewer system. MAWC is qualified to provide the service**,** as it already provides water service to over 450,000 Missouri customers, and sewer service to over 11,000 Missouri customers. MAWC has the financial ability to provide the service because no external financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is realistic given its prior experience and past performance. The proposal promotes the public interest as demonstrated by Garden City's citizens voting to proceed with MAWC's Asset Purchase Agreement.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to MAWC have been satisfied and that it is in the public's interest for MAWC to provide water and sewer service to the customers currently served by Garden City. Further, the Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the water and sewer system it wishes to purchase from Garden City. Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate

[4] The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff.

Rate base

MAWC seeks to establish the ratemaking rate base associated with the Garden City water and sewer assets in this matter pursuant to Section 393.320, RSMo.[5] That statute states, in pertinent part:

> The procedures contained in this section may be chosen by a large water public utility, and if so chosen shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.

MAWC is a "large water public utility" as it is a "public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service."[6] Garden City is a "small water utility" as it is a "water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections."[7]

Section 393.320.3(1), RSMo requires an appraisal to be performed by three appraisers. Such an appraisal has been performed on the Garden City water and sewer system and is attached to MAWC's application. The appraisal contains a joint assessment of the fair market value of the water system and sewer system.

Section 393.320.5(1), RSMo states, in part, that the "lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the

[5] Per the Staff Recommendation, this is the first time a utility has availed itself of this statutory method of establishing the rate base for purchased assets.
[6] Section 393.320.1(1) RSMo.
[7] Section 393.320.1(2) RSMo.

ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, the purchase price is equal to the appraised value. That value is $3 million, of which $2,265,587 is for water assets, and $734,413 for sewer assets. Staff’s Recommendation concurs with MAWC’s appraisal of the Garden City water and sewer assets. The appraised value of $3 million, together with the reasonable and prudent transaction, closing, and transition costs incurred by MAWC, shall constitute the ratemaking rate base.

Waiver of 60-day notice rule

MAWC’s application also asks the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). MAWC asserts there is good cause for granting such waiver because it did not engage in conduct that would constitute a violation of the Commission’s ex parte rule, and no asset purchase agreement existed within 60 days prior to filing its application. The Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company is granted a certificate of convenience and necessity to provide water and sewer service in the City of Garden City area described in the map and legal description Missouri-American Water Company provided to Staff, subject to the conditions and requirements contained in Staff’s Recommendation, including the filing of tariffs, as set out below:

    a. Because some Garden City customers are outside the city limits of Garden City, and in the service territory of Public Water Supply District No. 11 of Cass County, Missouri (District), Missouri-American Water Company shall seek to enter into a formal territorial agreement between the company and the District, and file such an agreement with the Commission for approval within 180 days of the effective

date of the Commission's order to approve the CCN; or, if the District and MAWC are unable to agree upon the boundaries of the water service area that are to be set forth in an agreement, file a request that the Commission designate the boundaries of the water service areas to be served by each party;

b. The Commission approves existing MAWC water and sewer rates applicable to customers outside the St. Louis region for water and sewer approved service areas within close proximity to the City system;

c. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively;

d. The City of Garden City or MAWC shall notify the Commission of closing on the assets within 5 days after such closing;

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

f. If MAWC determines that a transfer of the assets will not occur, MAWC 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 require MAWC to submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the City service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the City service area in both the water and sewer tariffs;

g. MAWC shall develop a plan to book all of the City plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, such that current rate base is broken down as $2,000,000 for the water system, and $1,000,000 for the sewer system, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within 60 days after closing on the assets;

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

i. MAWC shall adopt the depreciation rates ordered for MAWC in Case No. WR-2020-0344;

j. MAWC shall provide to the Customer Experience Department an example of its actual communication with the City service area customers regarding its acquisition and operations of the water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;

k. MAWC shall obtain from the City, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;

l. Except as required by §393.320, RSMo, the Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;

m. MAWC shall distribute to the City 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 4240-13.040(3), within thirty (30) days of closing on the assets;

n. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month’s billing within thirty (30) days of closing on the assets

o. MAWC shall communicate with the City customers concerning the billing date, delinquent date, and billing changes that will occur once the acquisition is approved, and provide a copy of this communication to CXD Staff.

p. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the City customers;

q. MAWC shall include the City customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and

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

2. Missouri-American Water Company is authorized to acquire the City of Garden City's water and sewer assets identified in the application.

3. Missouri-American Water Company is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

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

5. This order shall become effective on December 3, 2021.

6. This file shall be closed on December 4, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, 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 Buchanan County, Missouri as an Expansion of its Existing Certified Areas	)	**File No. GA-2021-0259**

ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

In *In Re Intercon Gas, Inc.,* 3 Mo P.S.C. 554, 561 (1991), the Commission articulated five criteria to guide its determination of whether granting the 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 Spire Missouri Inc. a certificate of convenience and necessity to operate a natural gas distribution system in a residential subdivision in Buchanan County, Missouri as a further expansion of its existing certificated area.

GAS

§3. Certificate of convenience and necessity

The Commission granted Spire Missouri Inc. a certificate of convenience and necessity to operate a natural gas distribution system in a residential subdivision in Buchanan County, Missouri as a further expansion of its existing certificated area.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its Office in Jefferson City on the 12th day of November, 2021.

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 Buchanan County, Missouri as an Expansion of its Existing Certificated Areas	)))))))))	**File No. GA-2021-0259**

ORDER APPROVING STIPULATION AND AGREEMENT AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: November 12, 2021 Effective Date: December 12, 2021

On February 15, 2021, Spire Missouri, Inc., d/b/a Spire, filed an application with the Missouri Public Service Commission (Commission) seeking 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 Buchanan County, Missouri, as a further expansion of its existing certificated area (Application). The proposed CCN area would extend service to 34 single-family residential lots. In its Application, Spire also requested that the 60-day notice rule be waived.[1] The Commission directed notice and established an intervention deadline. The Commission received no applications to intervene.

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

On October 1, 2021, the Staff of the Missouri Public Service Commission (Staff) and Spire filed a nonunanimous *Stipulation and Agreement* (Agreement). On November 1, 2021, Staff and Spire filed a nonunanimous *Amended Stipulation and Agreement* (Amended Agreement). Commission rules provide that if no party objects to a nonunanimous stipulation and agreement within seven days of its filing, the Commission may treat the stipulation and agreement as unanimous.[2] The Office of the Public Counsel, the only other party, did not sign the Amended Agreement, but has not opposed the Amended Agreement. Therefore, the Commission will treat the Amended Agreement as unanimous.

The Amended Agreement addresses Staff's concerns and provides that, subject to the terms of the agreement, the CCN should be granted for the specific area described in the agreement and set out below.

The Commission may grant a gas corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."[3] The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in *In Re Intercon Gas, Inc.*[4]

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

[2] 20 CSR 4240-2.115(2).
[3] Section 393.170.3, RSMo.
[4] 30 Mo P.S.C. (N.S.) 554, 561 (1991).

economically feasible; and (5) the service must promote the public interest.[5]

There is a need for the service, as the project developer approached Spire requesting a distribution extension to the project area, and natural gas is not currently offered by another regulated or unregulated entity in any of the project area. Spire is qualified to provide the service**,** as it already provides gas service to customers in the City of St. Louis, St. Louis County, Jackson County, St. Charles County, Greene County, and 37 other Missouri counties. Spire has the financial ability to provide the service and no external financing is anticipated. Considering the Application, Staff's recommendation, and the Amended Agreement, the Commission finds that the proposal is economically feasible. Additionally, the proposal promotes the public interest by providing service to this previously unserved area and promoting economic development and growth.

Based on the Application, Staff's recommendations, and the Amended Agreement, the Commission concludes that the factors for granting a certificate of convenience and necessity have been satisfied. The Commission further finds Spire's provision of gas service to the area as described in the Amended Agreement is necessary and convenient for the public service. Thus, the Commission will grant Spire a CCN to provide gas service within the area set out in the Amended Agreement and direct Spire and Staff to comply with the terms of the Amended Agreement.

Further, the Commission finds that the terms of the unopposed Amended Agreement are reasonable and necessary to Spire's provision of service in the newly

[5] 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).

certificated area and will approve it. The Commission will incorporate the terms of the Amended Agreement into this order.

Finally, the Commission will grant Spire's request for waiver of the 60-day case filing 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 Commission regarding substantive issues likely to arise in this file within 150 days before filing its application.

THE COMMISSION ORDERS THAT:

1. The provisions of the *Amended Stipulation and Agreement* filed on November 1, 2021, are approved and incorporated into this order as if fully set forth herein. Spire and Staff shall comply with the terms of the Amended Agreement. A copy of the Amended Agreement is attached to this order as Appendix A.

2. Spire is granted 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 for the area surrounding the subdivision located in Buchanan County, Missouri as described below:

PROPERTY DESCRIPTION

> A tract of land being part of Section 31 Township 55 North, Range 34 West and part of Section 36, Township 55 North, Range 35 West of the 5th P.M., Buchanan County Missouri bounded on the north by the north line of said Sections 31 and 36; bounded on the east by the east line of said Section 31; bounded on the west by the west line of said Section 36; bounded on the south by the south line of said Buchanan County.
>
> Commencing at the west quarter corner of Section 31. Township 55 North. Range 34 West Buchanan County. Missouri: thence with the line of the southwest quarter of said section north 89 degrees 17 minutes 03 seconds east. 37.02 feet to the Point of Beginning, said point being on the eastern right-of-way line of Missouri Route "Y"; thence continuing along the north

> line of the southwest quarter of said west, 478.80 feet the south right-of-way line of Dean Park Drive; thence along said south right-of-way line the following courses and distances: 164.77 feet by arc distance along a curve to the right having a radius of 150 feet and a chord bearing of south 75 degrees 22 minutes 26 seconds west, 156.61 feet; thence north 71 degrees 43 minutes 20 seconds west, 304.48 feet; thence 90.54 feet by arc distance along a curve to the left having a radius of 275 feet and a chord bearing of north 81 degrees 09 minutes 17 seconds west, 90.14 feet; thence south 89 degrees 24 minutes 14 seconds west, 767.18 feet to the east right-of-way line of Missouri Route “Y”; thence departing from the south line of Dean Park Drive and along the east right-of-way line of Missouri Route "Y” the following courses and distances: North 00 degrees 35 minutes 46 seconds west, 50.00 feet; thence south 89 degrees 24 minutes 14 seconds west, 7.95 feet; thence north 01 degrees 00 minutes 38 seconds east, 350.73 feet to the Point of Beginning.
>
> The above-described tract of land contains 12.87 acres, more or less, exclusive of Missouri Route "Y" right-of-way, and is subject to all recorded and unrecorded easements, restrictions, and rights-of-way.

3. A contribution from the developer in the amount set out in paragraph 7 of the Amended Agreement is appropriate in this case.

4. Spire shall hold customers receiving service outside of the requested CCN area harmless of any expenses and investments in excess of billed non-gas revenues excluding infrastructure system replacement surcharge (ISRS) revenues.

5. All ratemaking determinations shall be held for consideration in a future general rate case.

6. Spire shall file an updated tariff sheet to incorporate the legal description of the subdivision location upon Commission approval of this Agreement.

7. Spire shall provide Staff with plant asset records related to the Company’s expansion in the requested area.

8. The sixty-day notice of case filing requirement is waived for good cause found pursuant to 20 CSR 4240-4.017(1)(D).

9. This order shall become effective on December 12, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Seyer, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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 Buchanan County, Missouri as an Expansion of its Existing Certificated Areas	)))))))	File No. GA-2021-0259

AMENDED STIPULATION AND AGREEMENT

COMES NOW Spire Missouri Inc., d/b/a Spire ("Spire" or "Company"), and the Staff of the Missouri Public Service Commission ("Staff"), collectively referred to herein as the "Signatories," and hereby submit this Amended Stipulation and Agreement ("Agreement") for approval by the Commission.

BACKGROUND

1. On February 15, 2021, Spire filed an application for a Certificate of Convenience and Necessity ("CCN") to expand Spire's existing certificated area in Buchanan County, Missouri ("Application").

2. On June 16, 2021, Staff filed its recommendation and memorandum.

3. On June 28, 2021, Spire filed its response to Staff's recommendation and memorandum.

4. On July 14, 2021, Staff filed an amended recommendation.

5. The Signatories have participated in extensive settlement negotiations and have reached a Stipulation and Agreement in this matter and recommend the Commission approve this Agreement as described herein.

6. On October 29, 2021, the Commission issued and Order for Staff and/or Spire to file an explanation of the "contribution" included in paragraph 6 of the Original Agreement (now paragraph 7 below). In compliance with that Order, Spire and Staff have agreed to file this Amended Stipulation and Agreement in an effort to address the Commission's October 29, 2021 Order and potentially expedite approval for this subdivision to move forward with natural gas for the winter months. The only changes beyond the title exist in this paragraph and paragraph 7 below.

AMENDED AGREEMENT AMONG THE SIGNATORIES

7. Spire agrees that a contribution from the developer in the amount of ** [redacted] ** is appropriate in this case.

8. Spire agrees to hold customers receiving service outside of the requested CCN area harmless of any expenses and investments in excess of billed non-gas revenues excluding ISRS revenues.

9. The Signatories agree that all ratemaking determination shall be held for consideration in a future general rate case.

10. Given the conditions in paragraphs 6, 7, and 8 the Signatories agree that Spire should be granted a CCN for only the area surrounding the subdivision located in Buchanan County, Missouri and as described in detail below.

PROPERTY DESCRIPTION

A tract of land being part of Section 31 Township 55 North, Range 34 West and part of Section 36, Township 55 North, Range 35 West of the 5th P.M., Buchanan County Missouri bounded on the north by the north line of said Sections 31 and 36; bounded on the east by the east line of said Section 31; bounded on the west by the west line of said Section 36; bounded on the south by the south line of said Buchanan County.

Commencing at the west quarter corner of Section 31. Township 55 North. Range 34 West Buchanan County. Missouri: thence with the line of the southwest quarter of said section north 89 degrees 17 minutes 03 seconds east. 37.02 feet to the Point of Beginning, said point being on the eastern right-of-way line of Missouri Route "Y"; thence continuing along the north line of the southwest quarter of said west, 478.80 feet the south light-of-

way line of Dean Park Drive; thence along said south right-of-way line the following courses and distances: 164.77 feet by arc distance along a curve to the right having a radius of 150 feet and a chord bearing of south 75 degrees 22 minutes 26 seconds west, 156.61 feet; thence north 71 degrees 43 minutes 20 seconds west, 304.48 feet; thence 90.54 feet by arc distance along a curve to the left having a radius of 275 feet and a chord bearing of north 81 degrees 09 minutes 17 seconds west, 90.14 feet; thence south 89 degrees 24 minutes 14 seconds west, 767.18 feet to the east right-of-way line of Missouri Route "Y"; thence departing from the south line of Dean Park Drive and along the east right-of-way line of Missouri Route "Y" the following courses and distances: North 00 degrees 35 minutes 46 seconds west, 50.00 feet; thence south 89 degrees 24 minutes 14 seconds west, 7.95 feet; thence north 01 degrees 00 minutes 38 seconds east, 350.73 feet to the Point of Beginning.

The above-described tract of land contains 12.87 acres, more or less, exclusive of Missouri Route "Y" right-of-way, and is subject to all recorded and unrecorded easements, restrictions, and rights-of-way.

11. Spire will file an updated tariff sheet to incorporate the legal description of the subdivision location upon Commission approval of this Agreement.

12. Spire will provide Staff with plant asset records related to the Company's expansion in the requested area.

13. Spire will withdraw the currently pending application to extend its certificated area in Barry County, Missouri, in File No. GA-2021-0216, upon Commission approval of this Agreement, and the Company reserves the right to file another application for the project described in that application at a later date.

GENERAL PROVISIONS

14. Except as otherwise expressly specified herein, none of the Signatories to this Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation, depreciation or revenue-related method, or any service or payment standard; and none of the signatories shall be prejudiced or bound in any manner by the terms of this Agreement in this or

any other Commission or judicial review or other proceeding, except as otherwise expressly specified herein. Nothing in this Agreement shall preclude the Staff in future proceedings from providing recommendations as requested by the Commission nor limit Staff's access to information in any other proceedings. Nothing in this Agreement shall be deemed a waiver of any statute or Commission regulation.

15. This Agreement has resulted from extensive negotiations among the Signatories and the terms hereof are interdependent. In the event that the Commission does not approve this Agreement, or approves this Stipulation and Agreement with modifications or conditions to which a Party to this proceeding objects, this Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

16. In the event the Commission accepts the specific terms of this Agreement, the Signatories waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1 (RSMo. 2016) to present testimony, to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.070. (RSMo. 2016); and their respective rights to judicial review of the Commission's Report and Order in this case pursuant to Section 386.510 (RSMo. Supp. 2020). These waivers apply only to a Commission order regarding the issues addressed in this Agreement in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

17. The Signatories agree that the Company's Application, as well as affidavits prepared and filed by any of the Signatories in lieu of a Memoranda in Support, that relates solely

to any issue or issues resolved by this Agreement shall be offered into evidence without the necessity of the respective witnesses taking the stand.

18. The Signatories shall have the right to provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests. Staff shall, to the extent reasonably practicable, provide the other Parties with advanced notice of the agenda in which Signatories may respond to the Commission's request for information. Any oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged, highly confidential, or proprietary.

19. If the Commission so requests, the Staff shall file suggestions or a memorandum in support of this Agreement. Each of the other Signatories shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum which shall also be served on all parties to the case. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other Parties in this case, whether or not the Commission issues an Order approving this Agreement.

20. To assist the Commission in its review of this Agreement, the Parties also request that the Commission advise them of any additional information the Commission may desire from the Parties relating to the matters addressed in this Agreement, including any procedures for furnishing such information to the Commission.

WHEREFORE, for the foregoing reasons, the undersigned Signatories respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Stipulation and Agreement.

Respectfully Submitted,

/s Ron Irving

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on all parties to this case on 1st day of November, 2021 by electronic mail.

/s/ Rachel L. Niemeier

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Spire Missouri Inc.'s d/b/a	)	
Spire Request for Authority to Implement a	)	**File No. GR-2021-0108**
General Rate Increase for Natural Gas	)	
Service Provided in the Company's	)	
Missouri Service Areas	)	

AMENDED REPORT AND ORDER

ACCOUNTING

§2. Obligation of the utility
§7. Duty to keep proper accounts generally
§8. Uniform accounts and rules
§12. Capital account
§43. Financial Accounting Standards Board requirements

The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).

§2. Obligation of the utility
§7. Duty to keep proper accounts generally
§8. Uniform accounts and rules
§24. Liabilities
§43. Financial Accounting Standards Board requirements

The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.

§2. Obligation of the utility
§7. Duty to keep proper accounts generally
§8. Uniform accounts and rules
§43. Financial Accounting Standards Board requirements

The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.

§10. Additions, retirements and replacements
The Commission found that without a proposal to replace its entire fleet of meters, the utility should replace meters on an as-needed basis and consistent with Commission meter testing sampling rules.

§23.1. Employee compensation
The Commission has historically not allowed earnings based compensation to be recovered in rates because those incentives predominantly benefit shareholders and not ratepayers. Incentivizing employees to improve a utility's bottom line aligns the employee interests with the shareholders and not ratepayers.

§23.1. Employee compensation
In allowing incentive compensation, the Commission noted that the monetary benefits for which the bonuses are paid are already included in the utility's cost of service.

§38. Taxes
§38.1. Book/tax timing differences
The Commission found it was proper for a Net Operating Loss (NOL) asset balance (which may include NOL Carryover (NOLC)) to be included as an offset to the Accumulated Deferred Income Tax (ADIT) Liability.

§38. Taxes
§38.1. Book/tax timing differences
The Commission distinguished the cash obtained by a utility through tax strategy to increase deductions and reduce taxable income as entirely different from the income tax costs included in rates intended to cover current tax payments based on the revenue requirement of a rate case. The law on the inclusion of the NOL asset balance is clear, and the Commission determined that the NOL asset balance should be included in rate base as an offset to Accumulated Deferred Income Tax (ADIT).

§38. Taxes
§40. Working capital and current assets
The Commission determined that since a utility was not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the cash working capital (CWC) calculation was inappropriate. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission found that the appropriate expense lag days for income taxes within the CWC calculation was 365 days.

DEPRECIATION

§9. Generally
§17. Life of property
§32. Gas
The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.

EXPENSE

§16. Ascertainment of expenses generally
§35. Construction

The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.

§16. Ascertainment of expenses generally
§35. Construction

The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).

§22. Reasonableness generally
§27. Additions and betterments

The Commission found that without a proposal to replace its entire fleet of meters, the utility should replace meters on an as-needed basis and consistent with Commission meter testing sampling rules.

§24. Test year and true up

The Commission found that the utility was using short-term debt to finance long-term assets because it converted several hundreds of millions of dollars of short-term debt to long-term debt eleven days before the close of the true-up period. This was the second instance of a large conversion of short-term debt close to the deadline of its rate case by this utility.

§26. Accidents and damages
§35. Construction
§50. Insurance and surety premiums

The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.

§33. Capital amortization

The Commission determined that a proposal for amortization of the general plant accounts was not appropriate as it would threaten the ability to perform a prudence review of plant added to these accounts because it failed to track retirement units and original costs.

§33. Capital amortization
§37. Depreciation
The Commission found that amortization rates over-recover as compared to weighted average values for depreciation rates.

§37. Depreciation
The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.

§67. Taxes
The Commission found it was proper for a Net Operating Loss (NOL) asset balance (which may include NOL Carryover (NOLC)) to be included as an offset to the Accumulated Deferred Income Tax (ADIT) Liability.

§67. Taxes
The Commission distinguished the cash obtained by a utility through tax strategy to increase deductions and reduce taxable income as entirely different from the income tax costs included in rates intended to cover current tax payments based on the revenue requirement of a rate case. The law on the inclusion of the NOL asset balance is clear, and the Commission determined that the NOL asset balance should be included in rate base as an offset to Accumulated Deferred Income Tax (ADIT).

§67. Taxes
The Commission determined that since a utility was not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the cash working capital (CWC) calculation was inappropriate. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission found that the appropriate expense lag days for income taxes within the CWC calculation was 365 days.

GAS

§13. Additions and betterments
§44. Additions and betterments
The Commission found that without a proposal to replace its entire fleet of meters, the utility should replace meters on an as-needed basis and consistent with Commission meter testing sampling rules.

§18. Rates
The Commission found that a Rate Normalization Adjustment Rider (RNA) as proposed would have allowed adjustments beyond the statutorily authorized adjustments for weather or conservation.

§18. Rates
The Commission found that Section 386.266.3, RSMo (Supp. 2020) limited authorized rate schedules to those due to variations in either weather, conservation, or both.

§26. Restriction of service
§29. Costs and expenses
§42. Particular kinds of expenses generally
§52. Construction
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).

§42. Particular kinds of expenses generally
§52. Construction
The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.

§43. Accidents and damages
§52. Construction
§67. Insurance and surety premiums
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.

§50. Capital amortization
The Commission determined that a proposal for amortization of the general plant accounts was not appropriate as it would threaten the ability to perform a prudence review of plant added to these accounts because it failed to track retirement units and original costs.

§50. Capital amortization
The Commission found that amortization rates over-recover as compared to weighted average values for depreciation rates.

§54. Depreciation
The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.

RATES

§106. Special charges; amount and computation
§108. Gas

The Commission found that a Rate Normalization Adjustment Rider (RNA) as proposed would have allowed adjustments beyond the statutorily authorized adjustments for weather or conservation.

§106. Special charges; amount and computation
§108. Gas

The Commission found that Section 386.266.3, RSMo (Supp. 2020) limited authorized rate schedules to those due to variations in either weather, conservation, or both.

§108. Gas

The Commission has historically not allowed earnings based compensation to be recovered in rates because those incentives predominantly benefit shareholders and not ratepayers. Incentivizing employees to improve a utility's bottom line aligns the employee interests with the shareholders and not ratepayers.

§118. Method of allocating costs
§120. Rate design, class cost of service for gas utilities

In allowing incentive compensation, the Commission noted that the monetary benefits for which the bonuses are paid are already included in the utility's cost of service.

VALUATION

§63. Expenses and revenues

The Commission determined that since a utility was not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the cash working capital (CWC) calculation was inappropriate. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission found that the appropriate expense lag days for income taxes within the CWC calculation was 365 days.

§68. Depreciation generally
§70. Factors affecting propriety thereof

The Commission found that amortization rates over-recover as compared to weighted average values for depreciation rates.

§68. Depreciation generally
§70. Factors affecting propriety thereof

The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Spire Missouri Inc.'s d/b/a Spire Request for Authority to Implement a General Rate Increase for Natural Gas Service Provided in the Company's Missouri Service Areas	)))))	**File No. GR-2021-0108** Tracking No. YG-2021-0133

AMENDED REPORT AND ORDER

Issue Date: November 12, 2021

Effective Date: November 22, 2021

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REGULATORY LAW JUDGE: Charles Hatcher

AMENDED REPORT AND ORDER

On October 27, 2021, the Commission issued its *Report and Order* resolving the above-captioned cases. On October 29, 2021, Spire Missouri Inc. filed a *Motion for Clarification and Expedited Treatment.* Subsequently, the Commission directed expedited responses for those parties wishing to respond. On November 3, 2021, after receiving responses from the Staff of the Missouri Public Service Commission and the Office of the Public Counsel, the Commission issued its *Order Providing Clarification to Report and Order and Delegating Authority.* On November 5, 2021, Spire Missouri Inc. filed *Spire's Application for Rehearing, Motion for Reconsideration and Motion for Expedited Treatment*. Also on November 5, 2021, the Office of the Public Counsel filed *OPC's Application for Rehearing or Reconsideration.* The motions generally request that the Commission clarify, reconsider and rehear certain aspects of its *Report and Order*. The Commission directed expedited responses to the two motions. Spire Missouri responded to OPC's motion, arguing against each issue OPC raised. No other responses were received.

The Commission has reviewed the requests and the responses and finds that clarification to its *Report and Order* is needed. Therefore, the Commission amends its *Report and Order* accordingly to clarify those sections. All requests for rehearing filed regarding the Commission's *Report and Order* issued on October 27, 2021, are moot as this *Amended Report and Order* supplants it. This *Amended Report and Order* will be given a ten-day effective date. All applications for rehearing of this *Amended Report and Order* must be filed prior to this effective date.

Procedural History

On December 11, 2020, Spire Missouri Inc. d/b/a Spire (Spire Missouri or "the Company") filed tariff sheets designed to implement a general rate increase for natural gas service, and to consolidate, to the extent possible, the rate structures of its two service areas known as Spire East and Spire West. As filed, the tariff sheets would have increased Spire Missouri's annual gas revenues by approximately $112 million, of which $47 million is already being recovered through Infrastructure System Replacement Surcharge (ISRS) charges, resulting in a net increase of $65 million. Pursuant to the statute, ISRS charges terminate with the conclusion of a rate case, becoming part of rate base, and the ISRS charge is reset to zero.[1]

The Commission suspended Spire Missouri's general rate increase tariff sheets until November 10, 2021, the maximum amount of time allowed by the controlling statute.[2] The following parties filed applications and were allowed to intervene: Midwest Energy Consumers Group (MECG); Missouri Industrial Energy Consumers (MIEC); National Housing Trust (NHT); Renew Missouri (Renew MO); Legal Services of Eastern Missouri, Inc. (LSEM); Consumers Council of Missouri (CCM); Missouri School Boards' Association (MSBA); and Vicinity Energy Kansas City, Inc. (Vicinity).

The Commission established the test year for this case as the 12-month period ending September 30, 2020, and trued-up for known and measurable revenue, rate base, and expense items through May 31, 2021. The Commission also established a procedural schedule leading to an evidentiary hearing.

[1] Section 393.1012.3, RSMo (Supp. 2020).
[2] Section 393.150, RSMo (2016). (All statutory references are to the Revised Statutes of Missouri 2016, unless otherwise noted.)

During the week of June 22 to June 25, 2021, the Commission held six local public hearings. Due to COVID, the local public hearings were held by WebEx, an audio and visual teleconferencing application. The six local public hearings were designated for geographic regions of the state, with one hearing designated for customers of all service areas.[3] During the local public hearings the Commission heard from a total of twenty-two witnesses. The Commission also received 236 written comments.

The parties prefiled direct, rebuttal, and surrebuttal testimony and direct and rebuttal true-up testimony. The evidentiary hearing began on August 2, 2021, and concluded on August 6, 2021.[4] The true-up hearing was waived by request of the parties. The parties filed post-hearing briefs on September 7, 2021, and reply briefs on September 17, 2021.[5]

On various dates, the eleven parties submitted a total of four partial stipulations and agreements, which were addressed by previous order.[6] After the Commission approved the stipulations, nine issues still remained unresolved.[7] This Report and Order addresses those nine remaining issues.

[3] Transcript Volumes (hereinafter "Tr. Vol.") 4-9.
[4] Tr. Vol. 10-14.
[5] The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).
[6] *Order Approving Partial Stipulations and Agreements*, issued September 15, 2021.
[7] For continuity, this Report and Order will use the same issue numbering system as used throughout this case.

General Findings of Fact

1. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire East (formerly known as Laclede Gas Company or LAC) and Spire West (formerly known as Missouri Gas Energy or MGE).[8]

2. The Office of the Public Counsel (OPC) is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

3. The Commission Staff (Staff) is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

4. Spire West serves approximately 520,000 customers on the western side of Missouri.[9]

5. Spire East serves approximately 650,000 customers on the eastern side of Missouri.[10]

6. Spire Missouri is a wholly-owned subsidiary of Spire Inc.[11]

7. Since 2013, Spire Inc. has acquired Alabama Gas Corporation (Alagasco) and Mobile Gas in Alabama and Wilmut Gas in Mississippi. Spire Inc. created a new shared services entity, Spire Services Inc., on July 15, 2015.[12]

[8] *Joint Stipulation of Facts*, filed July 19, 2021, para. 8.
[9] *Joint Stipulation of Facts*, filed July 19, 2021, para. 9.
[10] *Joint Stipulation of Facts*, filed July 19, 2021, para. 10.
[11] *Joint Stipulation of Facts*, filed July 19, 2021, para. 12.
[12] *Joint Stipulation of Facts*, filed July 19, 2021, para. 14.

8. Spire Inc. owns three gas distribution systems as wholly-owned subsidiaries including Spire Missouri, Alagasco in Alabama, and EnergySouth Inc. in Alabama and Mississippi.[13]

9. Spire Inc. also holds gas marketing business segments and Spire STL Pipeline LLC. Spire STL Pipeline is an interstate transmission pipeline regulated by the Federal Energy Regulatory Commission (FERC).[14]

10. The rates Spire Missouri will be allowed to charge its customers are based on a determination of the company's revenue requirement. The revenue requirement can be expressed as the following formula:[15]

$$RR = COS - CR$$

where: RR = Revenue Requirement
COS = Cost of Service
CR = Adjusted Current Revenues

The cost-of-service for a regulated utility can be defined by the following formula:

$$COS = O + (V - D)R$$

where: COS = Cost of Service;
O = Adjusted Operating Costs (Payroll, Maintenance, etc.), Depreciation Expense and Taxes
V = Gross Valuation of Property Required for Providing Service
D = Accumulated Depreciation Representing Recovery of Gross Property Investment
R = Allowed Rate of Return
V – D = Rate Base (Gross Property Investment less Accumulated Depreciation = Net Property Investment)
(V - D)R = Return Allowed on Net Property Investment

[13] *Joint Stipulation of Facts*, filed July 19, 2021, para. 15.
[14] *Joint Stipulation of Facts*, filed July 19, 2021, para. 16.
[15] *Joint Stipulation of Facts*, filed July 19, 2021, para. 17.

11. A test year is a historical year used as the starting point for determining the basis for adjustments that are necessary to reflect annual revenues and operating costs in calculating any shortfall or excess of earnings by the utility.[16]

12. Adjustments, such as annualization and normalization, are made to the test year results when the unadjusted results do not fairly represent the utility's most current annual level of existing revenue and operating costs.[17]

13. A normalization adjustment is an adjustment made, to a cost or revenue, to reflect normal, on-going operations of the utility. Revenues or costs that were incurred in the test year that are determined to be atypical or abnormal will get specific rate treatment and generally require some type of adjustment to reflect normal or typical operations. The normalization process removes abnormal or unusual events from the cost of service calculations and replaces those events with normal levels of revenues or costs.[18]

14. 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]

15. The test year for this case is the twelve months ending September 30, 2020, adjusted for known and measurable changes through May 31, 2021.[20]

General Conclusions of Law

A. Spire Missouri is a public utility, and a gas corporation, as those terms are defined in Subsections 386.020(18) and (43), RSMo (Supp. 2020). As such, Spire

[16] *Joint Stipulation of Facts*, filed July 19, 2021, para. 18.
[17] *Joint Stipulation of Facts*, filed July 19, 2021, para. 19.
[18] *Joint Stipulation of Facts*, filed July 19, 2021, para. 20.
[19] *Joint Stipulation of Facts*, filed July 19, 2021, para. 21.
[20] *Joint Stipulation of Facts*, filed July 19, 2021, para. 7.

Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.[21]

B. The Commission's subject matter jurisdiction over Spire Missouri's rate increase request is established under Section 393.150, RSMo.

C. Section 393.150, RSMo, authorizes the Commission to suspend the effective date of a proposed tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

D. Spire Missouri can charge only those amounts set forth in its tariffs.[22]

E. Subsection 393.140(11), RSMo, gives the Commission authority to regulate the rates Spire Missouri may charge its customers for natural gas.

F. Utilities are required to provide safe and adequate service.[23]

G. In determining the rates Spire Missouri may charge its customers, the Commission is required to determine whether the proposed rates are just and reasonable.[24]

H. Spire Missouri has the burden of proving its proposed rates are just and reasonable, pursuant to Section 393.150.2, RSMo, "[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation . . . ."

[21] *Joint Stipulation of Facts*, filed July 19, 2021, para. 11.
[22] Sections 393.130 and 393.140, RSMo.
[23] Sections 393.130 and 393.140, RSMo.
[24] Section 393.150.2, RSMo.

I. In order to carry its burden of proof, Spire Missouri must meet the preponderance of the evidence standard.[25] In order to meet this standard, the Company must convince the Commission it is "more likely than not" that Spire Missouri's proposed rate increase is just and reasonable.[26]

J. In determining whether the rates proposed by Spire Missouri are just and reasonable, the Commission must balance the interests of the investor and the consumer.[27] 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.[28]

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

> What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure

[25] *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).
[26] *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).
[27] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).
[28] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

> 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.[29]
>
> 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.[30]

K. 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.[31]

L. 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

[29] *Bluefield,* at 692-93.
[30] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).
[31] *Federal Power Commission v. Natural Gas Pipeline Co*. 315 U.S. 575, 586 (1942).

> method employed which is controlling. It is not theory but the impact of the rate order which counts.[32]

M. Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony."[33]

N. An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence.[34]

Findings of Fact regarding WNAR and two proposed RNAs – Issue 30

16. Spire Missouri currently has a Weather Normalization Adjustment Rider (WNAR). The Company's WNAR is designed to address revenue variations caused by abnormal weather, and has been useful in addressing weather related revenue impacts.[35]

17. With a WNAR, adjustments to revenue are based on the relationship between usage and weather at the time of the rate case and the difference between actual and normal weather.[36]

18. The WNAR includes a coefficient (β) that is the measurement of the usage response of the customers to weather as defined in the rate case.[37]

19. Spire Missouri requests replacing its currently effective WNAR with a Rate Normalization Adjustment Rider (RNA).[38]

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[32] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).
[33] *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).
[34] *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).
[35] Ex. 34, Selinger direct, p. 28, lns. 10-12.
[36] Ex. 213, Mantle rebuttal, p. 15, lns. 14-16.
[37] Ex. 212, Mantle direct, p. 8, lns. 8-9.
[38] Ex. 34, Selinger direct, p. 28, lns. 9-10.

20. Spire Missouri's proposed RNA aims to address the revenue impacts of changes in usage due to weather and conservation.[39] However, the Company's proposed RNA would also account for fuel switching, rate class switching, and economic factors that impact usage in the second block and not just changes due to weather and conservation.[40]

21. Spire Missouri's proposed RNA mechanism would be paired with a block rate design, with a usage within a specified block (above or below the block break amount are the "blocks") being designated weather-sensitive and subject to variations due to weather and conservation.[41]

22. A block rate design divides each customer group by usage. The residential customers are divided by a block break, which is a designation of volume usage of natural gas (e.g. 100 Ccf[42] per month). The small general service (SGS) customers are similarly divided, but by their own block break. The Company retains the risk for customers with usage below the block break. All sales above the block break are reconciled to rate case billing determinants.[43]

23. Staff proposed a block break of 50 Ccf for residential, and a beginning block break of 200 and an ending block break of 500 Ccf for SGS customers. Spire Missouri proposed a block break of 30 Ccf for the residential class and 100 Ccf for the SGS class.[44]

[39] Ex. 34, Selinger direct, p. 28, lns. 15-17.
[40] Ex. 213, Mantle rebuttal, p.14, lns. 10-16.
[41] Ex. 34, Selinger direct, p. 29, lns. 18-20.
[42] Ccf is a volume measurement of natural gas and equals 100 cubic feet of natural gas. Eia.gov/tools/faqs accessed October 27, 2021.
[43] Ex. 104, Staff Class Cost of Service Report, p. 39, lns. 15.
[44] Ex. 213, Mantle rebuttal, p. 29, lns. 6-18.

24. Both Spire Missouri and Staff proposed RNAs that would insulate Spire Missouri from fluctuations in the usage above the block break as it relates to the revenue requirement of Spire Missouri's residential and SGS customer classes. This mechanism removes Spire Missouri's risk of recovering the portion of its revenue requirement that is subject to volumetric recovery for these two classes.[45]

25. Spire Missouri's proposed RNA would essentially decouple the revenues received from the residential and SGS customers from their usage thus removing almost all of the revenue risk from the Company and placing that risk on customers.[46]

26. The RNA rider amount is based on the change in usage of those customers above the block break (second block) and assumes weather and conservation only impacts the usage of the second block. However, after the RNA rate is calculated, it is applied to all usage, regardless of what block the usage falls in. This results in customers with low usage, i.e. non-weather-sensitive customers with little room for conservation, being charged more because other customers were more weather-sensitive or conserved energy.[47]

27. Spire Missouri, for its proposed RNA, defines conservation broadly to include the adoption of energy efficiency measures, as well as any other factor inducing changes to the volumes of gas sold.[48]

28. Staff, for its proposed RNA, defines conservation as "the wise utilization of natural product especially by a manufacturer so as to prevent waste and insure future use

[45] Ex. 213, Mantle rebuttal, p.14, lns. 3-7.
[46] Ex. 213, Mantle rebuttal, p.17, lns. 4-7.
[47] Ex. 213, Mantle rebuttal, p.17, lns. 16-21.
[48] Ex. 34, Selinger direct, p. 29, lns. 13-14.

of resources that have been depleted."[49] Staff's definition of conservation is fairly broad, thus Staff's proposed RNA would allow for recovery of many economic factors.[50]

29. Spire Missouri's RNA has a broader interpretation of conservation than Staff's; hence Spire Missouri's RNA will capture more situations outside of the traditional conservation definition.[51]

30. Spire Missouri failed to explain the analysis used by the Company to develop its RNA, or why an RNA is needed to cover both weather and conservation.[52]

31. Spire Missouri's RNA does not directly address either conservation or weather. It only addresses the difference between rate case revenue requirement and the revenue actually collected.[53]

32. Non-weather and non-conservation economic factors available for recovery under Staff's proposed RNA include:

a. lower natural gas use due to a health event, such as COVID;[54]

b. rate switching from the SGS class;[55]

c. switching source fuel;[56] and

d. departure and addition of customers.[57]

33. Non-weather and non-conservation economic factors available for recovery under Spire Missouri's proposed RNA include:

[49] Ex. 104, Staff Class Cost of Service Report, p. 38, footnote 15 citing Webster's Third New International Dictionary 483 (1986).
[50] Tr. Vol. 12, pp. 464-465.
[51] Ex. 138, Stahlman surrebuttal, p. 3, lns. 13-15; Tr. Vol. 12, pp. 464-465.
[52] Ex. 212, Mantle direct, p. 2-5; Ex. 213, Mantle rebuttal, p.12, lns. 26-27.
[53] Ex. 213, Mantle rebuttal, p.19, lns. 5-8.
[54] Tr. Vol. 12, p. 465, lns. 10-25.
[55] Tr. Vol. 12, p. 466, lns. 1-9.
[56] Tr. Vol. 12, p. 455, lns. 14-16; and p. 466, lns. 13-23.
[57] Ex. 104, Staff Class Cost of Service Report, p. 42, footnote 19.

a. lower natural gas use due to a health event, such as COVID;[58]

b. rate switching from the SGS class;[59]

c. departure of customers;[60] and

d. recession.[61]

34. Spire Missouri has continuously had a weather-related rider since first authorized in 2002.[62]

35. The issue with the existing WNAR is not the mechanism but Spire Missouri's understanding and implementation of the mechanism.[63]

36. OPC proposed six modifications to the existing WNAR, meant to simplify it. The proposed modifications are as follows:

a. the interest rate included should be Spire Missouri's short-term interest rate;[64]

b. the β coefficients measuring response to weather should be updated consistent with the weather normalization of usage in this case;[65]

c. the volumetric rates should be updated consistent with the rates in this case;[66]

d. the WNAR should be changed to require an annual filing instead of semi-annual filings;[67]

[58] Tr. Vol. 12, p. 442, lns. 3-9.
[59] Tr. Vol. 12, p. 441, lns. 17-25.
[60] Tr. Vol. 12, p. 441, lns. 13-16.
[61] Tr. Vol. 12, p. 442, lns. 14-17.
[62] File No. GR-2002-356, *Report and Order*, issued November 8, 2002.
[63] Tr. Vol. 12, p. 467, lns. 21-25.
[64] Ex. 212, Mantle direct, p. 11, lns. 19-23.
[65] Ex. 212, Mantle direct, p. 12, lns. 1-19.
[66] Ex. 212, Mantle direct, p. 12-13.
[67] Ex. 212, Mantle direct, p. 13-14.

e. Spire Missouri's tariff change request filings should be made with a 60-day- effective date;[68] and

f. the tariff sheets should be simplified in the manner proposed by OPC.[69]

37. The modifications proposed by OPC would make the WNAR simpler and easier to understand.[70]

38. If reauthorized by the Commission, Staff also recommended the existing WNAR should be amended to require the Company to file updated WNAR tariff sheets 60 days in advance of their proposed effective date.[71]

39. Spire Missouri's current WNAR tariff only requires an updated WNAR tariff sheet to be filed 30 days in advance of its proposed effective date. This necessitates Staff reviewing that submission and filing its recommendation within 10 to 15 days, which is not always adequate for a full review, especially when substitute tariff sheets are filed.[72]

Conclusions of Law regarding WNAR and two proposed RNAs – Issue 30

O. Section 386.266.3, RSMo (Supp. 2020), provides that any gas 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.

[68] Ex. 214, Mantle surrebuttal, p. 14, lns. 1-15.
[69] Ex. 212, Mantle direct, p. 13-14; and Schedule LMM-D-3.
[70] Ex. 213, Mantle rebuttal, p. 20, lns. 12-13.
[71] Ex. 123, Stahlman rebuttal, p. 4, lns. 16-17.
[72] Ex. 123, Stahlman rebuttal, p. 4, lns. 18-20.

Decision regarding WNAR and two proposed RNAs – Issue 30

OPC argues that either of the proposed RNAs will allow recovery for weather, conservation and "everything else that impacts revenue." The Commission agrees. The record clearly indicates that recovery will be available for many variations other than weather and/or conservation. Such a recovery mechanism, as is proposed in both Staff's and Spire Missouri's proposals, is not authorized by statute, and thus cannot be authorized by the Commission.

Staff and Spire Missouri both attempt to qualify their own respective proposed RNA by offering competing definitions of conservation. The disagreement between Staff and Spire Missouri over which definition of conservation to use is moot in light of the fact that neither of the proposed RNAs establish how their designated block breaks are just and reasonable metrics of usage under either definition of conservation.

Although Spire Missouri did not request continuation of its WNAR, the Company did request an adjustment mechanism to account for changes in usage due to variations in weather and conservation. Spire Missouri failed to demonstrate a viable method to evaluate impacts of conservation. However, the Commission finds it is appropriate to authorize the continuation of a modified WNAR to address the revenue impacts of weather variations. With the six recommendations of OPC, the WNAR would be simpler and easier to understand for Spire Missouri. Staff further testified that the extension of the review period for revisions to a WNAR tariff from 30 to 60 days is necessary to ensure adequate review. The Commission agrees on both counts. As with any authorization to file periodic rate adjustments approved under Section 386.266.3, RSMo, Spire Missouri

is free not to file a WNAR rider. If it chooses to do so, however, such WNAR tariff sheets shall incorporate the six recommendations of OPC.

Findings of Fact regarding Net Operating Loss Carryforward – Issue 16

40. 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 asset account.[73]

41. The NOL Asset is the balance of the accumulation of all prior NOLs.[74]

42. The NOL Asset represents a tax benefit that Spire Missouri has not yet realized, and therefore, it is appropriate to include as an offset to total accumulated deferred income taxes (ADIT).[75]

43. ADIT is the summation of normalized book/tax timing differences (caused by tax deductions) that are temporary in nature and will become a tax liability to Spire Missouri in future periods. Since Spire Missouri is able to use book/tax timing differences to avoid paying current income taxes, the ADIT balance represents an amount of cash Spire Missouri has avoided spending on its past income tax liabilities and is considered a cost-free loan from the federal government.[76]

44. Excess ADIT exists because timing differences that were temporary in nature transitioned to permanent differences due to federal and state tax reform. Since

[73] Ex. 125, Young rebuttal, pp. 6-7.
[74] Ex. 125, Young rebuttal, p. 7, lns. 5-6.
[75] Ex. 125, Young rebuttal, pp. 7-8.
[76] Ex. 125, Young rebuttal, p. 6, lns. 14-18.

the tax benefits were no longer temporary, ratepayers would not have received the benefits in future periods so it is appropriate to return the excess ADIT through ongoing amortizations.[77]

45. In ratemaking terms, ADIT is a measurement of the tax savings Spire Missouri has received from the Internal Revenue Service (IRS) but has not passed on to ratepayers through the ratemaking process.[78]

46. The rate base reduction for ADIT, including an offset for NOL, is a measurement of how much free cash a company has been able to generate from the government via tax deductions.[79]

47. The NOL offset to ADIT is recognized as the portion of a utility's tax deductions that cannot be currently applied to taxable income to reduce income taxes. This recognition of an NOL tax asset in rate base is mandated by the IRS's normalization requirements.[80]

48. When bonus depreciation and other tax deductions grow so large as to push the company's taxable income into the negative, the available tax deduction cannot offset any liability and no "free" cash is generated. In that circumstance, the company must record an offsetting deferred tax asset for the net operating loss carryforward (NOLC). The NOLC offsets the ADIT, which would decrease the company's rate base, and therefore, the NOLC has the effect of increasing the rate base.[81]

[77] Ex. 125, Young rebuttal, p. 9, lns. 8-12.
[78] Ex. 125, Young rebuttal, p. 6, lns. 12-14.
[79] Ex. 140, Young surrebuttal, p. 7, lns. 13-15.
[80] Ex. 140, Young surrebuttal, p. 8, lns. 16-20.
[81] Ex. 140, Young surrebuttal, p. 7, lns. 5-11, citing File No. ER-2014-0258, *Report and Order,* issued April 29, 2015.

49. The NOL ADIT Asset is recorded to Account 190. The NOL ADIT Asset may include NOLs carried forward from prior periods.[82]

50. When there is an NOL (the ADIT Asset), it means that a portion of the interest free loan from the Federal Treasury (the ADIT Liability) has not been realized.[83]

51. In certain circumstances, tax law requires an NOL to be included as an offset to total ADIT to avoid a normalization violation.[84]

52. It is appropriate to include the NOL ADIT Asset in rate base to offset the ADIT Liability that has not been realized due to the excess of tax depreciation over book depreciation. The net of these two ADIT balances represents the realized portion of the interest free loan which is an appropriate (required by normalization provisions of the Internal Revenue Code) rate base reduction.[85]

53. The cash obtained by the utility through tax strategy is entirely different from the income tax costs included in rates intended to cover current tax payments.[86]

54. The difference between current income tax expense collected from customers and cash paid to the IRS does not factor into the ADIT component of rate base.[87]

55. Staff Accounting Schedule 11 for Spire West and Spire East includes the income tax calculation. Total income tax is calculated beginning with the total net income before taxes. Net taxable income is derived by adding and subtracting nondeductible

[82] Ex. 11, Felsenthal rebuttal, p. 11, ln. 14.
[83] Ex. 12, Felsenthal surrebuttal, p. 9, lns. 22-23.
[84] Ex. 140, Young surrebuttal, p. 8, lns. 19-20.
[85] Ex. 12, Felsenthal surrebuttal, p. 10, lns. 1-5.
[86] Ex. 140, Young surrebuttal, p. 8, lns. 6-8.
[87] Ex. 140, Young surrebuttal, p. 8, lns. 20-22.

items and adjusting for depreciation, among other things. Provisions for federal, Missouri state, and city income taxes are included in the total income tax calculation. Various deferred income taxes, including the amortization of excess ADIT are part of the total income tax calculation that is then included in Spire Missouri's cost of service.[88]

56. OPC proposes as an alternative to removal of the NOL Asset, that the Commission use a tracker to offset the NOL based on three years' worth of income tax expense.[89]

57. OPC proposes a tracker to quantify the difference between income tax expense included in rates and the NOL included in rate base. The difference could be recorded in a regulatory liability or tracker mechanism until Spire Missouri's next rate case where the amount could be amortized.[90]

58. It is not clear if the information sought by the tracker proposed by OPC is already being accounted for through the ADIT offset, or that it would produce any benefit.[91]

59. No additional evidence was provided by OPC to detail the mechanics of how its proposed tracker would work.

60. Spire Missouri has access to two sources of cash – one from deferred income taxes and one from current income taxes. The first source is the cash generated from customers through normalization of income tax deductions. The second source is

[88] Ex. 102, Staff Accounting Schedules.
[89] Ex. 211, Riley surrebuttal, p. 9, lns. 3-10.
[90] Ex. 211, Riley surrebuttal, pp. 8-9.
[91] Tr. Vol. 13, pp. 613-614.

the cash collected from ratepayers for payment of current income taxes. The two sources must be held distinct from each other.[92]

Conclusions of Law regarding Net Operating Loss Carryforward – Issue 16

P. The Commission has previously decided the issue of NOLC, stating as follows:

> However, when bonus depreciation and other tax deductions grow so large as to push the company's taxable income into the negative, the available tax deduction cannot offset any liability and no "free" cash is generated. In that circumstance, the company must record an offsetting deferred tax asset for NOLC. The NOLC offsets the ADIT, which would decrease the company's rate base, and therefore, the NOLC has the effect of increasing the rate base.[93]

Q. In the rates section of the Code of Federal Regulations discussing ADIT, there is this requirement: "[a]ny amounts properly includable in Account 190, Accumulated deferred income taxes, must be treated as an addition to rate base."[94]

Decision regarding Net Operating Loss Carryforward – Issue 16

The Commission finds it is proper for an NOL asset balance (which may include NOLC) to be included as an offset to the ADIT Liability. This decision is consistent with the Commission's prior decisions in this matter, and no argument was raised to cause the Commission not to apply the same reasoning in the present case.

OPC argues against the inclusion of the NOL asset balance because it contends that a second balance of funds is theoretically available as a substitute for the first balance of funds. OPC offers no authority that would allow the Commission to authorize such substitution. The cash obtained by the utility through tax strategy to increase deductions

[92] Ex. 140, Young surrebuttal, p. 7, lns. 15-20.
[93] File No. ER-2014-0258, *Report and Order*, p. 18, lns. 14-19.
[94] 18 CFR § 154.305 for gas pipelines; 18 CFR § 35.24 for electric.

and reduce taxable income is entirely different from the income tax costs included in rates intended to cover current tax payments based on the revenue requirement of this rate case. The law on the inclusion of the NOL asset balance is clear, and the Commission determines that the NOL asset balance should be included in rate base as an offset to ADIT. The Commission finds the testimony of Staff's and Spire Missouri's witnesses on this issue to be more credible than the testimony provided by OPC.

The Commission also determines the tracker recommended by OPC as an alternative to removal of the NOL Asset has not been defined to any level of detail. There is not adequate evidence in the record to make a determination that a tracker of income tax expense to be compared in the next Spire Missouri rate case to the NOL Asset would be appropriate. The NOL Asset is an offset to ADIT. The calculation of income tax expense includes recognition of deferred ADIT and excess ADIT. Therefore, it cannot be determined from the record evidence how the relationship between ADIT, the NOL Asset and OPC's proposed tracker of income tax expense used to reduce NOL may or may not jeopardize Spire Missouri's compliance with IRS normalization rules if implemented.

In addition, OPC's proposed income tax expense tracker seeks to compare the tracked amount to the actual income taxes paid by Spire Missouri. However, the utilization of a 365-day expense lag for income taxes in Cash Working Capital (CWC), as set out below, would also compensate customers for paying the income tax expense when no income taxes are actually paid and is an adjustment to rate base. To allow an income tax expense tracker in addition to the CWC 365-day income tax expense lag would overcompensate customers. Therefore, the Commission denies OPC's request for an income tax expense tracker.

Findings of Fact regarding Cash Working Capital – Issue 8

61. CWC is the amount of funds, on average, required for the utility to pay its day-to-day expenses. When a utility expends funds to pay an expense necessary to provide service before its customers provide corresponding payment, the utility's shareholders are the source of the funds. This shareholder funding represents a portion of the shareholders' total investment in the utility, for which shareholders are compensated by inclusion of these funds in the utility's rate base. By including these funds in rate base, the shareholders earn a return on this working capital they have invested.[95]

62. Customers supply CWC when they pay for gas services received before the utility pays an expense incurred in providing that service. Utility customers are compensated for the funds they provide by a reduction to the utility's rate base, meaning that the utility does not earn a return on the working capital supplied by customers.[96]

63. A CWC analysis identifies whether a utility's customers or its shareholders are responsible for providing these funds in the aggregate.[97]

64. A positive CWC requirement indicates that, in the aggregate, the shareholders provided the CWC for the test year. A negative CWC requirement indicates that the utility's customers provided the CWC for the test year, meaning that, on average, the customers paid for the utility's services before the utility paid the expenses that the utility incurred to provide those services.[98]

[95] Ex. 101, Staff Cost of Service Report, p. 33, lns. 14-21.
[96] Ex. 101, Staff Cost of Service Report, p. 33, lns. 24-27.
[97] Ex. 209, Riley direct, p. 8, lns. 7-9.
[98] Ex. 101, Staff Cost of Service Report, pp. 33-34.

65. A major component of a CWC calculation is lag, which is the amount of time, usually in days, that it takes revenues to come in from the customer or the time it takes for the utility to pay out an expense. Both a revenue lag and an expense lag are measured.[99]

66. Staff Accounting Schedules 8 for Spire East and Spire West include the components used to calculate the amount of CWC to include in rate base.[100]

67. Customer payments are fairly homogenous and this revenue lag is a consistent multiplier in the CWC calculation. In contrast, each expense component of the CWC calculation has a different payment schedule based on when the individual expense needs to be paid.[101]

68. The money collected for income taxes is an expense included in the cost of service and is not dependent upon the CWC requirement. Any adjustment to CWC will not affect the money collected in rates to pay income taxes.[102]

69. Spire Missouri has significantly reduced its current federal and state income tax obligations over the past few years through tax planning strategies and the use of bonus depreciation deductions for certain expenditures for property. As a result, the Company has generated large annual taxable losses that have resulted in significant federal and state NOLs in years prior to the Tax Cuts and Jobs Act. Spire Missouri plans to utilize these NOLs in the future to reduce income tax obligations.[103]

[99] Ex. 209, Riley direct, p. 8, lns. 10-12.
[100] Ex. 102, Staff Accounting Schedules; Ex. 146, Staff True-Up Accounting Schedules.
[101] Ex. 209, Riley direct, p. 8, lns. 13-16.
[102] Tr. Vol. 12, p. 523-524.
[103] Ex. 209, Riley direct, p. 9, footnote 7, quoting from Spire SEC 10-K 2020, p. 14, lns. 13-17.

70. Spire Inc.'s state and federal income tax returns, Spire Missouri's annual report filed with the Commission, and the public 10-K reports filed with the U.S. Securities and Exchange Commission,[104] all indicate that both the parent company and Spire Missouri have not been required to pay income tax in at least the past three years.[105]

71. Spire Missouri's current NOLC makes it highly unlikely that it will pay income taxes for the next three years.[106]

72. It is necessary to include income taxes in the CWC calculation because income taxes are already an expense item built into the Company's revenue requirement.[107]

73. Income tax expense and income tax CWC are separate and distinct components of the revenue requirement.[108]

74. The final CWC adjustment is dependent on the final income tax expense included in the cost of service and will be determined after the impact of all issues decided by the Commission are included in the revenue requirement.[109]

75. Spire Missouri proposed, and Staff accepted, a federal and state income tax expense lag of 38 days.[110] A 38-day lag is consistent with the payment of quarterly income taxes.[111]

[104] A 10-K is a comprehensive report filed annually by a publicly-traded company about its financial performance. Investopedia.com, accessed October 20, 2021.
[105] Ex. 209, Riley direct, p. 9, lns. 4-6.
[106] Tr. Vol. 12, p. 525, lns. 19-20.
[107] Ex. 209, Riley direct, p. 9, lns. 16-17.
[108]Ex. 209, Riley direct, p. 10, lns. 5-7.
[109] Ex. 209, Riley direct, p. 11, lns. 2-5.
[110] Ex. 209, Riley direct, p. 7, lns. 12-16.
[111] Ex. 119, Nieto rebuttal, p. 3, lns. 14-15.

76. An expense lag of a year recognizes the revenue is being provided by customers, but is never being paid out by the utility as an expense.[112]

77. If Spire Missouri had an income tax liability it would be required to submit quarterly income tax payments in accordance with IRS publication 542.[113]

78. Income tax expense is included in rates but the Company will not have to pay any income taxes through the period that these rates will be in effect. This is a negative CWC requirement that is deducted from Spire Missouri's rate base.[114]

79. Even though Spire Missouri is not paying income taxes, Staff includes an amount for income tax expense in its rate case cost of service because it interprets the IRS income tax normalization rules as requiring it pursuant to 26 USC § 6655(c).[115]

Conclusions of Law regarding Cash Working Capital – Issue 8

R. The IRS does not require a corporation to make quarterly income tax payments to avoid penalty if the corporation does not expect to incur taxes in excess of $500.[116]

S. Federal tax law, 26 USC § 6655(c), requires the remittance of quarterly estimated income taxes by specific due dates during the calendar year.

T. The Internal Revenue Code (IRC), § 168(i)(9)(A)(i), requires the income tax expense built into a rate case cost of service to be the income tax amount that a company would incur if it did not take advantage of accelerated depreciation and other tax advantage timing differences.

[112] Ex. 210, Riley rebuttal, p. 5, lns.14-18.
[113] Tr. Vol. 12, p. 509, lns. 14-18.
[114] Ex. 211, Riley surrebuttal, p. 10, lns. 14-16.
[115] Tr. Vol. 12, p. 510-511.
[116] 26 USC §6655(f); *see also* Exhibit 49, *IRS Publication 542*, p. 6, "Generally, a corporation must make installment payments if it expects its estimated tax for the year to be $500 or more."

U. Pursuant to IRC §168(i)(9)(A)(i) the taxpayer must, in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes.

Decision regarding Cash Working Capital – Issue 8

The Commission finds that federal and state income tax expense is included in rates but the Company is not likely to remit any federal or state income taxes because of its NOLC. Since the Company is not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the CWC calculation is inappropriate. This lack of income tax payment should be reflected in the CWC expense lag. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission finds that the appropriate expense lag days for income taxes within the CWC calculation is 365 days.

Additionally, the Commission finds that using a 365-day expense lag for federal and state income taxes in the calculation of CWC under the methodology used in rate cases before the Commission does not circumvent IRS normalization rules or create a violation because CWC does not include ADIT. Thus, the IRS rules on normalization are not relevant to this CWC issue.

Findings of Fact regarding Incentive Compensation – Issue 13

80. Spire Missouri's Annual Incentive Plans (AIP) provides an annual cash payout to eligible union and non-union participants.[117]

81. Annual incentive compensation incentivizes employees to capture further savings past the year previously incentivized.[118] An employee must generate new savings in order to earn further incentive payments.[119]

82. Employees of Spire East and Spire West are eligible for annual bonuses under Spire Missouri's AIP. This incentive compensation plan provides an annual cash payout to eligible union and non-union participants based on four components: corporate performance, business unit performance, individual performance, and team unit performance. Measurement goals and a target incentive pool are established for each plan year and terms of the AIP are communicated to all employees within 90 days of the beginning of the plan year.[120]

83. The first component of AIP, corporate performance, is measured with the financial metric of Net Economic Earnings Per Share (NEEPS). NEEPS differs from the traditional Earnings Per Share (EPS) calculation in that NEEPS ignores the effect on net income of certain extraordinary items (e.g. unrealized losses, acquisition losses). This AIP component is applicable to payouts made to all employees.[121]

84. The second component of incentive compensation is the business unit performance. This component is applicable to all employees. In direct testimony, Spire

[117] Ex. 101, Staff Cost of Service Report, p. 66, lns. 19-20.
[118] Tr. Vol. 12, p. 558, lns. 3-7.
[119] Tr. Vol. 12, p. 558, lns. 22-25.
[120] Ex. 101, Staff Cost of Service Report, p. 66, lns. 18-23.
[121] Ex. 101, Staff Cost of Service Report, p. 66, lns. 24-28.

Missouri indicated that management had conducted a detailed review of the company's AIP design in the fall of 2018. During this review, Spire Missouri made the decision to replace the previous business unit objective, Utility Operating Income, with two new objectives, Utility Contribution Margin and Utility Adjusted O&M per Customer. Utility Contribution Margin is calculated as Utility Gross Revenues – Gas Costs – Gross Receipts Tax, and is also referred to as Net Operating Revenue. Utility Adjusted O&M per Customer is calculated as (Utility O&M Expenses + Property Taxes)/12 Month Average Number of Customers.[122]

85. The third component of incentive compensation, individual performance, is applicable only to non-union employees. Each non-union employee collaborates with his or her supervisor to establish goals for the upcoming year. At the end of the plan year, the supervisor awards a composite rating of actual performance based on the rating of the employee's various personal goals. The employee's performance directly affects the amount of payout the employee can receive from the individual component of the AIP, but does not affect their corporate or business unit component award. Staff included this component in rates.[123]

86. The fourth component of AIP is team unit performance, and is applicable only to union employees. Unlike non-union employees that establish goals for each individual, union employees earn AIP payouts based upon the performance of their respective union (e.g. call center employees or field operation employees). A majority of the metrics embedded in the team unit AIP component are customer-oriented goals such as: average call handle time, call abandonment rate, Occupational Safety and Health

[122] Ex. 101, Staff Cost of Service Report, p. 67, lns. 20-28.
[123] Ex. 101, Staff Cost of Service Report, pp. 67-68.

Administration (OSHA) recordable incident rate, leak response time, etc. Generally, Staff supports such metrics as successful achievement of these goals can lead to lower costs incurred by the utility, which lead to a lower cost of service.[124]

87. A proper determination of revenue requirement is dependent upon matching the rate base, return on investment, revenues, and operating cost components at the same point in time. This ratemaking principle is commonly referred to as the "matching" principle.[125]

88. Staff made adjustments to remove all the long-term incentive compensation expense because it is earnings based. Staff also removed the expense associated with the corporate performance component in Spire Missouri's AIP because it is also earnings based.[126]

89. The Commission in general, and specifically in the case of Spire West, has disallowed incentive compensation based on financial metrics that tie payouts to the level of shareholder's interest achieved. The Commission expressed this position in its Report and Order in Spire West's 2004 Rate Case, File No. GR-2004-0209.[127]

90. In 2018, Spire Missouri implemented two new AIP business unit performance metrics – utility contribution margin, and utility adjusted operations and maintenance (O&M) per customer.[128]

[124] Ex. 101, Staff Cost of Service Report, p. 68, lns. 5-12.
[125] Ex. 100, Lyons direct, p. 6, lns. 7-10.
[126] Ex. 101, Staff Cost of Service Report, p. 66, lns. 14-16.
[127] Ex. 101, Staff Cost of Service Report, p. 66, lns. 28-31.
[128] Ex. 131, Juliette surrebuttal, p. 10, lns. 4-5.

91. Both of the new metrics provide benefits to ratepayers as they incentivize employees to reduce expenses or increase revenues while providing safe and reliable service.[129]

92. Any savings Spire Missouri recognized because of its successful incentive compensation plan that is currently in effect would be built into the test year for this rate case proceeding. These savings, therefore, will be reflected in Spire Missouri's cost of service approved by the Commission in this case and will be built into the approved general rates.[130]

93. Staff's cost of service report includes a level of incentive compensation expense representative of Spire Missouri's incentive compensation expense for the year following this rate case.[131]

94. The level of incentive compensation expense that is included in Staff's cost of service report excludes earnings based compensation, the corporate performance component.[132]

95. Staff has included a level of non-earnings based AIP expense associated with the bonuses paid out that Staff believes will be representative of Spire Missouri's incentive compensation expense for the year following this case.[133]

[129] Ex. 131, Juliette surrebuttal, p. 10, lns. 5-7.
[130] Ex. 131, Juliette surrebuttal, p. 8, lns. 9-12.
[131] Ex. 131, Juliette surrebuttal, p. 8, lns. 9-12.
[132] Tr. Vol. 12, p. 556, lns. 12-20.
[133] Ex. 131, Juliette surrebuttal, p. 8, lns. 12-14.

96. The Commission has consistently disallowed incentive compensation based upon earnings metrics while allowing inclusion of incentive compensation based upon customer and operational metrics.[134]

97. Incentive payments are paid out once and an employee has to generate new savings in order to get another further incentive payment in a future year.[135]

98. The AIP corresponds to Spire Missouri's fiscal year with bonuses paid out to employees after the end of the fiscal year for performance goals reached during the fiscal year.[136]

99. Staff reviewed Spire Missouri's AIP in effect during the test year where bonuses were paid out during the rate case true-up period.[137]

100. Spire Missouri's AIP provides non-monetary benefits such as quicker response time to leaks, increased customer satisfaction, and improved service call quality.[138]

101. Spire Missouri's AIP provides non-monetary benefits that include customer safety and response lead times.[139]

102. It is not guaranteed that earnings will increase in response to a particular incentive plan.[140]

103. Incentive compensation is a component of overall employee compensation, and is included with items such as pensions, benefits, and base pay. Double recovery is

[134] Ex. 131, Juliette surrebuttal, p. 9, lns. 1-3.
[135] Tr. Vol. 12, p. 558.
[136] Tr. Vol. 12, p. 562.
[137] Tr. Vol. 12, p. 563. Clarification of Staff witness Juliette that AIP bonus expense included in the cost of service corresponds with benefits for the same period of time.
[138] Tr. Vol. 12, p. 570.
[139] Tr. Vol. 12, p. 565, lns. 5-13.
[140] Tr. Vol. 12, p. 566, lns. 11-14.

not an issue as the savings from the plan achievements are included in the cost of service as reductions in cost or increases in revenue, both of which benefit customers who pay for the incentive plan through cost of service.[141]

104. OPC recommends no inclusion of incentive compensation expense in Spire Missouri's cost of service.[142]

105. OPC argues that incentive programs are structured such that their costs are recovered in the productivity they generate.[143]

106. The benefits and costs of the 2021 AIP are not included in the cost of service.[144]

107. Staff's adjustment to USOA Account No. 920, Administrative and General Salaries, to exclude the earnings-based portion of AIP is a negative adjustment to remove $2,174,121 from Spire East's cost of service. The remaining costs of the AIP remain in Spire East's cost of service. Staff did not make a positive adjustment to AIP to increase expenses in Spire East's cost of service.[145]

108. There is no adjustment required to include the costs associated with bonuses paid out for the benefits achieved during the test year.[146]

109. The benefits or costs savings that have already been achieved during the test year will be included in rates.[147]

[141] Ex. 131, Juliette surrebuttal, p. 9, lns. 7-11.
[142] Tr. Vol. 12, p. 570, lns. 1-4.
[143] Ex. 203, Schallenberg direct, p. 20, lns. 7-8, and ln. 13.
[144] Tr. Vol. 12, p. 533, lns. 4-8.
[145] Ex. 102, Staff Accounting Schedule 10, *Adjustments to Income Statement Detail*, p. 8.
[146] Tr. Vol. 12, p. 559, lns. 1-10.
[147] Tr. Vol. 12, p. 559, lns. 1-10.

Conclusions of Law regarding Incentive Compensation – Issue 13

V. The Commission has historically disallowed bonus plans targeting shareholder profits.[148]

W. Presented with a partial disallowance of rate case expense, the Supreme Court of Missouri has approved the disallowance where some of the issues pursued in a general rate case by the utility benefitted only its shareholders and not its ratepayers.[149]

X. Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony."[150]

Y. An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence.[151]

Decision regarding Incentive Compensation – Issue 13

The Commission has historically not allowed earnings based compensation to be recovered in rates because those incentives predominantly benefit shareholders and not ratepayers. Incentivizing employees to improve Spire Missouri's bottom line aligns the employee interests with the shareholders and not ratepayers. Staff appropriately disallowed recovery of the bonuses paid under the corporate performance component of Spire Missouri's AIP because it was earnings based. Spire Missouri did not dispute Staff's

[148] Tr. Vol. 12, pp. 556-57. *See also* File No. GR-2004-0209, *Report and Order*, September 21, 2004, p. 43 "Improvements to the company's bottom line chiefly benefit the company's shareholders, not its ratepayers. Indeed, some actions…might have an adverse effect on ratepayers."); File No. ER-2006-0314, *Report and Order*, December 21, 2006, p. 58 ("[I]f 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."); and File No. ER-2007-0291, *Report and Order*, December 6, 2007, p. 49 ("…because maximizing EPS could compromise service to ratepayers, such as by reducing maintenance, the ratepayers should not have to bear that expense.").
[149] Spire Missouri, Inc. v. PSC, 618 S.W.3rd 225, 233-234 (Mo. banc 2021).
[150] *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).
[151] *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

recommended disallowance of corporate performance bonuses. 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.

OPC's position is that no amount of AIP bonus expense should be approved, because including it in rates leads to double recovery. On the question of double recovery, the Commission finds the testimony of Staff to be more credible than that of OPC. The test year includes all the monetary benefits of employees attaining their AIP goals through reduced expenses and/or increased revenues. To not include the bonus expense paid out to employees during the true-up period that led to the benefits would be contrary to the matching principle.

OPC argues that future AIP benefits will be greater than the cost to run the programs. That position considers that the net benefits are a result of subtracting the cost of the incentive programs from the gross benefits. Subtracting the cost of the incentive programs from the gross benefits is exactly what the Commission is providing through its acceptance of Staff's adjustment to include a portion of AIP bonus expense in the cost of service since the gross benefits are already included. The benefits and bonus expense of the 2021 AIP are not included in the test period. OPC's theory is unworkable when a company designs an employee incentive program that focuses on non-monetary aspects such as customer service or safety training. The AIP bonuses rewarding employees for attaining non-monetary goals under OPC's position would not be recoverable in rates.

OPC argues that incentive compensation bonus expense is recovered by Spire Missouri (or any utility) twice. The first recovery is in rates. The alleged second recovery is in future periods between rate cases. However, OPC does not seem to recognize that

the monetary benefits for which the bonuses are paid have already been included in Spire Missouri's cost of service. Spire Missouri's AIP goals are set each fiscal year with bonuses paid out only if employees successfully reach the goals set for that fiscal year. Staff reviewed the AIP goals for the test year and made an adjustment to exclude bonus expense related to earnings goals. The Commission considers this adjustment to appropriately match the expense of employee bonuses to the benefits recognized in Spire Missouri's cost of service.

OPC has also raised a perceived conflict in Staff witness Juliette's testimony. OPC states that Mr. Juliette supported the idea that monetary benefits for which the bonuses are paid have already been included in the cost of service. OPC argues that Mr. Juliette thus contradicted his pre-filed testimony. The Commission disagrees with OPC's argument that a conflict exists in Mr. Juliette's testimony.

OPC relies on this quote, taken during cross examination of Staff witness Juliette, "We're looking for cost to achieve new benefits. Right? A. That is correct."[152] Cross examination of Mr. Juliette by OPC, and the source of OPC's concern, is found in Transcript Volume 12, pages 557-559. The questioning focused on the benefits achieved by the Company from a cost reduction or revenue increase and whether the related bonus is paid indefinitely. OPC also asks if benefits are built into rates. OPC then asks if costs need to be included to pay for benefits already achieved, and states for witness confirmation that the issue is cost to achieve new benefits. OPC then argues that this single answer from cross-examination establishes that Mr. Juliette is changing his testimony.

[152] Tr. Vol. 12, p. 559, lns. 12-13.

The Commission does not see a conflict in the testimony of witness Juliette. Where OPC argues a change in testimony, the Commission sees unclear questioning. The word cost is used in questioning of Mr. Juliette several times, such that the Commission itself is unclear as to what cost the questioner is referencing – the cost of the bonuses paid under an incentive plan; the savings of costs – a cost reduction; the costs inputted in the revenue requirement; or the cost of implementing an incentive plan other than the cost of bonuses. As the question is unclear as to the meaning of costs, and OPC's argument of testimonial conflict is based on one statement answering that is correct to an ambiguous question, the Commission does not find a conflict in Mr. Juliette's testimony.

Therefore, the Commission finds that the bonuses paid from the three non-earnings based components are appropriate. The Commission finds that $4,353,074 is the appropriate amount of incentive compensation combined for Spire East and Spire West to include in Spire Missouri's cost of service based upon Staff's Revenue Requirement Reconciliation – True-Up.

Findings of Fact regarding ultrasonic meter recovery – Issue 26

110. Spire Missouri switched to an ultrasonic meter to use when replacing existing diaphragm meters. Spire Missouri chose the Itron Intelis series of ultrasonic meters, and began installing them in June 2020 in Spire West.[153] Spire Missouri began installing ultrasonic meters in Spire East on June 29, 2021.[154]

111. Spire Missouri did not apply for an ultrasonic meter replacement program.[155]

[153] Ex. 32, Rieske rebuttal, p. 2-3.
[154] Tr. Vol. 11, p. 255, ln. 23.
[155] Ex. 33, Rieske surrebuttal, p. 3, lns. 2-12.

112. A primary benefit of the ultrasonic meter Spire Missouri chose is its safety on the customer side of the meter. The meter contains valves that automatically shut off the flow of gas when a sensor detects an open fuel run,[156] or when it detects a temperature of 176 degrees.[157]

113. Not all commercially available meters will work on Spire Missouri's system.[158]

114. The ultrasonic meters cost approximately $25.00 more than an equivalent diaphragm meter.[159]

115. A new ultrasonic meter costs approximately $170[160] to $200.[161]

116. A diaphragm meter that fails an accuracy test, and which Spire Missouri wants to reuse, must be refurbished to continue operation, which costs Spire Missouri approximately $221.[162]

117. Spire Missouri did not perform a formal cost-benefit study on replacing the existing meters with ultrasonic meters, but states the decision was based on a series of studies evaluating meter technology.[163]

118. Spire Missouri spent approximately one year studying its metering practices.[164]

[156] Ex. 32, Rieske rebuttal, p. 4-5.
[157] Ex. 32, Rieske rebuttal, p. 7, lns. 5-9; Tr. Vol 11, p. 235.
[158] Tr. Vol 11, p. 221.
[159] Ex. 32, Rieske rebuttal, p. 6, lns. 13-14.
[160] Ex. 115, Luebbert rebuttal, p. 6, lns. 19-20.
[161] Tr. Vol. 11, p. 232, lns. 5-8.
[162] Tr. Vol. 11, pp. 230-231.
[163] Ex. 33, Rieske surrebuttal, pp. 5-8.
[164] Ex. 33, Rieske surrebuttal, p. 5, lns. 9-11.

119. Spire Missouri developed metrics as a result of its one-year study on metering practices.[165]

120. At the beginning of 2018, Spire Missouri's service area contained 725,750 meters that are over 10 years old and eligible for meter sampling.[166]

121. Spire Missouri has a waiver of the Commission's rule regarding individual meter testing, and instead may utilize statistical sampling methods to select meters for removal for those meter groups with accuracy rates of 90%.[167]

122. In calendar year 2018 for Spire West, 95% of the sample meter population was testing below 90% accuracy.[168]

123. At the beginning of calendar year 2020, 337,000 meters are replacement eligible per Commission rules at Missouri West alone. Of that number, 70,000 meters were over 30 years old. Only 84.6% of legacy meters in Missouri West are currently meeting the accuracy test—the worst performance of all Spire regions.[169]

124. In the Spire West service area,[170] Spire Missouri used an opportunity-based approach to replace diaphragm meters with ultrasonic meters when it is already at a customer's premises for another purpose, such as a turn on or an atmospheric corrosion inspection. Spire Missouri states that the average labor cost is approximately $58.37 when an ultrasonic meter replaces a diaphragm meter at an opportunity-based replacement.[171]

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[165] Ex. 33, Rieske surrebuttal, p. 5, lns. 12-14.
[166] Ex. 33, Rieske surrebuttal, p. 5, lns. 15-16.
[167] GO-91-353; *Order Granting Variance from Compliance*, issued October 8, 1991 (Missouri Gas Energy f/k/a The Kansas Power and Light Company), pp. 1-2.
[168] Ex. 33, Rieske surrebuttal, p. 5, lns. 18-20.
[169] Ex. 32, Rieske rebuttal, p. 15, lns. 13-19.
[170] Ex. 32, Rieske rebuttal, p. 16, lns. 8-16.
[171] Ex. 33, Rieske surrebuttal, p. 14, lns. 6-15.

125. It costs Spire Missouri an estimated $107 to perform a meter installation as a standalone event.[172]

126. The use of a variety of meter types and sizes over the years has created a meter population for Spire Missouri of over 100 unique combinations of meter and network modules in service in Missouri. A network module has a unique connection to each meter type and this resulted in Spire Missouri being required to maintain and distribute inventory and supply equipment to install and program every possible combination. This created added expense and inefficiency in the process to sustain automated meter reading (AMR) equipment.[173]

127. The mechanical components in the operation of the meter diaphragm, meter index, and network module were prone to frequent breakage. During calendar year 2019, 9,333 meters were replaced because they quit accurately registering usage across Spire Missouri.[174]

128. The ultrasonic meter has an integrated network module which makes the meter one unit and eliminates the disparate vintages of meter and module.[175]

129. Of the 41,373 ultrasonic meters Spire Missouri has installed in Missouri to date, 74% of replacements were meters that were already mandated for testing by Commission rules.[176]

[172] Ex. 33, Rieske surrebuttal, p. 14, ln. 5.
[173] Ex. 33, Rieske surrebuttal, p. 6, lns. 2-7.
[174] Ex. 33, Rieske surrebuttal, p. 7, lns. 5-8.
[175] Ex. 33, Rieske surrebuttal, p. 7, lns. 3-4.
[176] Ex. 32, Rieske rebuttal, p. 16, lns. 2-4.

130. There is no evidence in the record as to whether the remaining 26% of meter replaced, which were less than 10 years old, were justified in being replaced as they were not eligible for accuracy testing under the Commission's meter testing rule.[177]

131. Spire Missouri plans to continue targeting the replacement of aged meters by following the meter sampling program requirements that target aged meter populations that are underperforming during accuracy testing.[178]

132. Recovery of the costs of the new ultrasonic meters is appropriate in instances where: the service was already disconnected; the existing meter needs replacement; and the alternative is a new diaphragm meter.[179]

133. Spire Missouri acknowledged that they condemn most meters that are removed for accuracy testing, particularly if their age exceeds more than 15 years; further, Spire Missouri stated that at times they retire meters as young as 10 years based on actual condition and useful life of that particular meter.[180]

134. Despite Spire Missouri completing 148,310 field activities to repair meters in calendar year 2020, 40,986 customer bills were estimated because a billing read was not available.[181]

135. Staff recommended disallowance of recovery of 26% of the ultrasonic meters booked in FERC subaccounts 381.1 and 382.1. As of May 31, 2021, Spire Missouri had booked $9.8 million in FERC subaccount 381.1 and $3.4 million in FERC

[177] Ex. 133, Leubbert surrebuttal, p. 4, lns. 11-15; Tr. Vol. 11, p. 265.
[178] Ex. 32, Rieske rebuttal, p. 16, lns. 14-16.
[179] Ex. 133, Leubbert surrebuttal, p. 4, 15-18.
[180] Ex. 208, Marke surrebuttal, attachment Response to Office of Public Counsel Data Request 2142.
[181] Ex. 33, Rieske surrebuttal, p. 8, lns. 1-2.

subaccount 382.1. The resulting recommended disallowance equates to $(2.5) million for FERC subaccount 381.1 and $(891,388) for FERC subaccount 382.1.[182]

136. Staff also recommends that Spire Missouri be required to file quarterly reports that describe any changes to the meter replacement strategy for each Missouri service territory as well as justification for any changes to the replacement strategy. The justification should include, but not be limited to, cost benefit analyses for the change in replacement strategy, alternative approaches considered, and potential customer impacts of the changes.[183]

137. Spire Missouri supported the provision of quarterly reports.[184]

Conclusions of Law regarding ultrasonic meter recovery – Issue 26

Z. Under Commission Rule 20 CSR 4240-10.030(19), gas utilities are required to remove, inspect and test meters every 10 years.

AA. Spire Missouri received a waiver to the 10 year inspection rule, and performs a statistical sampling instead of testing every meter.[185]

BB. The burden is on the gas corporation to prove that the gas costs it proposes are just and reasonable.[186]

Decision regarding ultrasonic meter recovery – Issue 26

The Commission finds that Spire Missouri's switch to ultrasonic meters for its replacement program is justified, except for the 26% of installations as alleged by Staff. Spire Missouri did not submit a proposal to replace its entire fleet of meters, so meters

[182] Ex. 133, Luebbert surrebuttal, pp. 4-5.
[183] Ex. 133, Luebbert surrebuttal, p. 5, lns. 8-13.
[184] Tr. Vol. 11, pp. 251-252.
[185] GO-95-320, *Report and Order*, issued May 13, 1997 (Laclede Gas Company); GO-91-353; *Order Granting Variance from Compliance*, issued October 8, 1991 (Missouri Gas Energy f/k/a The Kansas Power and Light Company).
[186] Section 393.150.2, RSMo.

should be replaced on an as-needed basis and consistent with Commission meter testing sampling rules.

The Commission finds that recovery for the cost of replacement of meters, replaced on an as-needed basis, is appropriate in instances where: the service was already disconnected; the existing meter needs replacement; and the alternative is a new diaphragm meter. The safety features and comparable costs make Spire Missouri's choice of a new ultrasonic meter (about $170 to $200) justified in instances where the options to replace an already disconnected meter are a new diaphragm meter (about $170 to $200 for a new ultrasonic meter, minus an approximate $25 difference in the cost of a new diaphragm meter equals about $145 to $175) or a refurbished diaphragm meter ($221).

The Commission finds that Spire Missouri has met its burden of showing the ultrasonic meter replacements were just and reasonable as to the 74% of ultrasonic meter replacements. The parties raised questions concerning Spire Missouri's justification for the remaining 26% of meter replacements.

Spire Missouri did not respond with any evidence demonstrating that the remaining 26% of the ultrasonic meter replacements were just and reasonable.

Spire Missouri met its burden of proof with respect to 74% of the ultrasonic meter replacements. However, given the lack of evidence as to the situation facing Spire Missouri regarding the remaining 26% of the ultrasonic meters it has installed, Spire Missouri has not met its burden with respect to demonstrating that those replacements were just and reasonable. The Commission cannot conclude that the replacement of 26% of the meters was just and reasonable in the absence of evidence from the utility.

Therefore, the Commission has no choice but to disallow recovery of 26% of the ultrasonic meter replacements as not having been shown to be just and reasonable.

As to the quarterly reports requested by Staff, and supported by OPC and Spire Missouri – the Commission agrees with the parties and will order the non-contested quarterly reports.

Findings of Fact regarding Depreciation – Issue 24

Depreciation Study

138. Depreciation, as applied to depreciable utility plant, means the loss in service value (not restored by maintenance). That loss must be incurred in the course of service, come from known causes, and not be covered by insurance. Generally, causes include wear and tear, decay, obsolescence, and changes in demand, among others.[187]

139. All parties are recommending the use of a single set of depreciation rates for Spire Missouri's service area (Spire East and Spire West currently have separate schedules).[188]

140. Spire Missouri submitted a depreciation study (Depreciation Study) that was performed in 2020 by Gannett Fleming Valuation and Rate Consultants.[189]

141. Staff conducted its own depreciation study,[190] using as sources the Depreciation Study prepared by Gannet Fleming, the spreadsheets submitted along with the study, Spire Missouri's data request responses, and previous Commission orders.[191]

[187] Ex. 101, Staff Cost of Service Report, p. 112, lns. 12-20.
[188] Ex. 200, Robinett direct, p. 1; Ex. 101, Staff Cost of Service Report, p. 112, lns. 24-25; Spire Initial Brief, p. 13.
[189] Ex. 35, Spanos rebuttal, Schedule JJS-R2.
[190] Ex. 101, Staff Cost of Service Report, p. 112, ln. 26.
[191] Ex. 101, Staff Cost of Service Report, p. 113, lns. 9-12.

142. OPC's position is that the Commission should order depreciation rates that convert Spire Missouri West to Spire Missouri East rates, supplemented by the Depreciation Authority Order issued in File No. GO-2020-0416 and adjust account 376.2 Cast Iron Mains to reflect the sunset provision of the ISRS statute and to account for under recovered investment being driven by joint encapsulation additions and retirements.[192]

143. The proposed depreciation rates in the Depreciation Study appropriately reflect the rates at which Spire Missouri's combined assets should be depreciated over their useful lives and are based on the most commonly used methods and procedures for determining depreciation rates.[193]

144. Staff has developed depreciation rates based on the combined life and net salvage analyses of Spire East and Spire West in a similar manner as prepared in the Depreciation Study.[194]

145. The historical data obtained and available for analysis by Spire West includes transactional entries for the period 1994 through 2020. The conversion of the initial data as of 1994 included installation years back to the initial year of service. A twenty-six year history of transactions is enough time, in the current case, to statistically develop valid life characteristics.[195]

146. As was done in the Depreciation Study, the statistical component of life and net salvage analyses for Spire West should include all of the forces of retirement and

[192] Ex. 201, Robinett rebuttal, p. 6, lns. 3-8, referring to *Order Approving Application for Depreciation Authority Order*, issued September 16, 2020.
[193] Ex. 35, Spanos rebuttal, p. 2, lns. 15-18.
[194] Ex. 35, Spanos rebuttal, p. 3, lns. 7-9.
[195] Ex. 35, Spanos rebuttal, p. 3, lns. 14-18.

drivers for replacement at that time so developing lives or net salvage estimates need to include different practices or policies if they existed.[196]

147. OPC's proposal to continue the use of the currently ordered depreciation rates for Spire East, and further to apply the Spire East depreciation rates to Spire West, ignores recent historical transactions, Company plans, and changes that have occurred in the industry in recent years.[197]

148. The Depreciation Study conducted in this case relates to the combined Spire East and Spire West entity, so the rates established in the GR-2017-0215 and GR-2017-0216 cases are not the same as the depreciation study presented in this case.[198]

149. The Depreciation Study, conducted in 2020, was provided as part of this case in order to present the combined analysis of the asset classes in place as of September 30, 2020.[199]

General plant account amortization

150. Spire Missouri requested its general plant accounts no longer be depreciated, but amortized. This means that the assets would have a predetermined life in which Spire Missouri would recover its cost. When the asset has reached its life span, it would then need to be retired so as to no longer recover additional depreciation beyond its original cost. After the asset has reached its life span, Spire Missouri recommends that

[196] Ex. 35, Spanos rebuttal, p. 3, lns. 21-24.
[197] Ex. 35, Spanos rebuttal, p. 4, lns. 13-15.
[198] Ex. 36, Spanos surrebuttal, p. 2, lns. 16-18.
[199] Ex. 36, Spanos surrebuttal, p. 3, lns. 1-3.

those assets would have a 0% depreciation rate in order to no longer have any depreciation expense.[200]

151. Spire Missouri addresses the following general plant accounts in relation to its amortization proposal: 391.00 – Office Furniture & Equipment, 391.10 – Mechanical Office Equipment, 391.20 – Data Processing Software/Systems, 391.30 – Data Processing Equipment, 393.00 – Stores Equipment, 394.00 – Tools, Shop, and Garage Equipment, 395.00 – Laboratory Equipment, 397.00 – Communication Equipment, 397.10 – Communication Equipment - ERT, and 398.00 – Miscellaneous Equipment.[201]

152. The general plant accounts that Staff proposes a different depreciation rate for are Accounts 391.00, 391.10, 391.20, 391.30, 393.00, 394.00, 395.00, 397.00, 397.10, 397.20 and 398.00.[202]

153. Spire Missouri's direct testimony depreciation rates are not the same as those filed in its rebuttal testimony.[203]

154. Spire Missouri is not required to use the depreciation rates recommended by its Depreciation Study.[204]

155. The useful lives that have been selected for General Plant Amortization, for electric utilities where the Commission has authorized this treatment, use the historical depreciation rates previously ordered for those accounts.[205]

[200] Ex. 128, Buttig surrebuttal, pp. 4-5.
[201] Ex. 128, Buttig surrebuttal, p. 4, table at ln. 11.
[202] Ex. 35, Spanos rebuttal, p. 17, lns. 6-8.
[203] Ex. 128, Buttig surrebuttal, p. 3, lns. 6-11.
[204] Ex. 128, Buttig surrebuttal, p. 4, lns. 1-5.
[205] Ex. 202, Robinett surrebuttal, p. 9, lns. 19-21.

156. Weighted average value for depreciation rates, as opposed to amortization rates, do not over-recover as would happen with Spire Missouri's amortization as the Company does not have an account set up for the assets that have fully accrued, thus those asset amounts would still be included in the amortized values.[206]

157. At the time the rates are set, Spire Missouri's rates are set with a level of fully accrued plant and depreciation expense built in to rates utilizing the entire plant balance. Ratepayers should receive the benefit of increased reserves if the utility does not timely retire fully accrued dollars. If general plant amortization is approved, it is Spire Missouri's decision how regularly to retire fully amortized general plant, which could be monthly, quarterly, bi-annually or annually.[207]

158. Spire Missouri maintains assets in the general plant accounts past their amortization period. This practice has, and would, lead to an over-recovery.[208]

159. Denying Spire Missouri's proposed change, and continuing with the Company's current methodology, is in the public interest because it enables the Commission, Staff, and OPC to conduct prudence reviews after the fact. Spire Missouri will continue to track retirements and costs, and it will provide data useful for conducting future depreciation studies that could otherwise be unavailable.[209]

160. General Plant account amortization threatens the ability to perform any sort of prudence review of plant added into these accounts because it fails to track retirement units and original costs. Under the General Plant amortization method, only two values matter: the total additions for an account in a vintage year and the amortization period

[206] Ex. 128, Buttig surrebuttal, p. 5, lns. 9-14.
[207] Ex. 202, Robinett surrebuttal, p. 9, lns. 6-11.
[208] Ex. 128, Buttig surrebuttal, p. 5, lns. 18-19.
[209] Ex. 202, Robinett surrebuttal, p. 12, lns. 3-7.

over which the original investments are to be recouped. Because only these two values are tracked, the method does not require the recording of the original cost of any particular asset. Stated differently, the total additions do not reflect the costs per retirement unit (a "retirement unit" being the smallest measurable breakdown of a particular type of asset to be recorded as capital). Not reflecting the costs per retirement unit is concerning because it will hamper the ability of parties to evaluate the prudency of capital expenditures. This is because it is difficult to make any type of prudency evaluation for a given asset when all the assets are lumped together in one account instead of being broken out by asset (*i.e.* cost per retirement unit).[210]

161. General Plant Amortization will only produce historical data for depreciation that matches the amortization period for the selected account. This is a problem because the amortization periods may or may not match the useful life of the assets. In other words, the data will only show the retirements booked in strictly dollar amounts and will not show retirement of any actual physical assets.[211]

Cast iron mains

162. The cast iron mains account has been growing and not decreasing with the removal and replacement of cast iron mains. The plant-in-service balance was $14 million in a 2010 case.[212] Ten years later, plant-in-service has a balance of $32 million. The cause of the increase is the joint encapsulations that allowed an existing main to continue to operate while new infrastructure was being installed in the adjacent areas. Those joint encapsulations are being capitalized in the cast iron main account.[213]

[210] Ex. 202, Robinett surrebuttal, p. 10, lns. 5-17.
[211] Ex 202, Robinett surrebuttal, pp. 10-11.
[212] File No. GR-2010-0171.
[213] Ex. 200, Robinett direct, pp. 3-5.

163. Based on the information known to Spire Missouri related to cast iron mains, all cast iron main plant-in-service will be retired by end of 2030 so the depreciation rate must include this life component in order to ensure the full recovery by end of 2030.[214]

164. In Spire Missouri's Depreciation Study the cast iron mains represent not only the remaining cast iron mains that are being replaced as part of the cast iron replacement program but also the cast iron main encapsulation assets.[215]

165. In Spire Missouri's Depreciation Study, the estimated survivor curve for Account 376.2, Mains - Cast Iron, reflects the Cast Iron Replacement Program. The program was initiated in 1989 but the current practices were developed in 2009 and will continue until all cast iron main and related assets are replaced. The current practices anticipate completing the replacement program within the next 10 years. Therefore, the survivor curve is truncated at year end 2030 to reflect the remaining life cycle.[216]

166. The 12.35% depreciation rate for cast iron mains proposed by Spire Missouri is appropriate for all related cast iron assets in Account 376.[217]

167. Both the main and the encapsulations will be replaced as part of Spire Missouri's cast iron main replacement program.[218]

Enterprise Software

168. The Enterprise Computer Software System (Enterprise Software) is a fully integrated and comprehensive information management system.[219]

[214] Ex. 35, Spanos rebuttal, p. 14, lns. 8-11.
[215] Ex. 36, Spanos surrebuttal, p. 4, lns. 3-5.
[216] Ex. 35, Spanos rebuttal, Schedule JJS-R2, p. 38.
[217] Ex. 36, Spanos surrebuttal, p. 4, lns. 5-6.
[218] Ex. 36, Spanos surrebuttal, p. 4, lns. 9-10.
[219] Ex. 128, Buttig surrebuttal, p. 6, lns. 11-13.

169. Spire Missouri recommends an average life of 10 years for Enterprise Software depreciation.[220]

170. The Enterprise Software assets were assigned at a 15-year service life and a depreciation rate of 7% in a previous case.[221]

171. The Company's Depreciation Study does not provide the evidence for a shortened average life for the Enterprise Software assets.[222]

172. Staff supports using the number approved in the Enterprise Software depreciation case.[223]

Plastic mains

173. Plastic mains are polyethylene and lack the inherent flaw of corrosion that exists in other main types.[224]

174. Staff and Spire Missouri recommend a decrease in the recommended average service lives for plastic mains of 15 years, from 75-years to 60-years.[225]

175. In File Nos. GR-2017-0215 and GR-2017-0216, OPC raised concerns that the accelerated nature of the ISRS and the retiring of sections of new plastic patches would have a negative impact on the average service life of the Account 376.3 Mains-Plastic.[226]

176. OPC testified that Laclede Gas Company and MGE's new practice that began in 2011 is to replace and abandon large amounts of plastic pipe before the useful life of those pipes has ended. Many of the replaced pipes were in the ground only a few

[220] Ex. 35, Spanos rebuttal, p. 16, lns. 21-22.
[221] File No. GO-2012-0363, *Report and Order*, effective October 13, 2012.
[222] Ex. 128, Buttig surrebuttal, p. 7, lns. 21-22.
[223] Ex. 128, Buttig surrebuttal, p. 7, lns. 1-5.
[224] Ex. 202, Robinett surrebuttal, pp. 20-21.
[225] Ex. 202, Robinett surrebuttal, pp. 5-6.
[226] Ex. 202, Robinett surrebuttal, p. 4, lns. 18-20.

years before being abandoned. Over time these multiple short lived asset retirements will cumulatively decrease the overall estimated average service life of plastic pipe installed in the entire system. This distortion in the average service life on this plant by continuous early retirements may result in a skewed and abnormal relationship between the plant and reserve balance. This skewed and abnormal relationship, if not noted and removed from the depreciation study, will likely indicate an increase in depreciation rates when no increase is actually needed. This potential increase in depreciation rates will increase Spire Missouri's (f/k/a Laclede Gas Company and MGE) cost of service artificially and unnecessarily.[227]

177. Spire Missouri witnesses have testified in prior ISRS cases that the useful life of plastic mains would exceed that of cast iron and unprotected steel mains.[228]

178. The current ordered rate for plastic mains is a 1.57% depreciation rate which is driven by a 70 year average service life and -10% net salvage.[229]

179. A 75-year average service life for plastic mains is consistent with the September 30, 2012, and 2016 depreciation studies performed by Spire Missouri East.[230]

180. Staff and Spire Missouri recommend a -40% net salvage value based on an increase in the cost of removal of plastic mains.[231]

181. The depreciation study for Laclede Gas Company for gas plant on September 30, 2003, indicated a 70-year average service life with a -15% net salvage. The depreciation study for Laclede Gas Company for gas plant at September 30, 2009,

[227] Ex. 202, Robinett surrebuttal, p. 5, lns. 11-22 citing to Robinett direct testimony in cases GR-2017-0215 and GR-2017-0216.
[228] Ex. 202, Robinette surrebuttal, p. 20, ln.19 through p. 21, ln.10.
[229] Ex. 202, Robinett surrebuttal, p. 5, lns. 5-6.
[230] Ex. 202, Robinett surrebuttal, p. 6, lns. 12-14.
[231] Ex. 202, Robinett surrebuttal, p. 6, lns. 14-16.

indicated a 70-year average service life with a -15% net salvage. The depreciation study for Laclede Gas Company for gas plant at September 30, 2012, indicated a 75-year average service life with a -25% net salvage. The depreciation study for Laclede Gas Company for gas plant at September 30, 2016, indicated a 75-year average service life with a -30% net salvage. The Depreciation Study for Spire Missouri for gas plant at September 30, 2020, indicated a 60 year average service life with a -40% net salvage.[232]

182. A 75-year average service life is consistent with Spire Missouri's prior depreciation studies.[233]

Smart meters

183. OPC and Staff propose that Spire Missouri continue to use a 20-year life for Smart Meters and Smart Meter Installation supported by the depreciation schedules ordered in File No. GO-2020-0416.[234]

184. According to the direct testimony and attached schedule of Mr. Selinger, Spire Missouri is proposing to maintain the currently ordered depreciation rates from File No. GO-2020-0416.[235]

185. Spire Missouri's response to OPC data request number 8511, answered by Spire Missouri's witness, Mr. Weitzel indicated that: The 15 year life for smart meters and their installation was based on the understanding of the nature of the smart meters and informed judgment of the life cycle of smart meters which includes the life estimates of

[232] Ex. 202, Robinett surrebuttal, p. 4, lns. 5-13.
[233] Ex. 202, Robinett surrebuttal, p. 6, lns. 12-14.
[234] Ex. 128, Buttig surrebuttal, p. 8, lns. 2-7; p. 9.
[235] Ex. 128, Buttig surrebuttal, p. 9, lns. 14-16.

other utilities in the industry that have experienced more defined life characteristics for smart meters.[236]

186. OPC asked an additional data request, number 2140, answered by Spire Missouri's witness, Mr. James Rieske, which discusses the smart meter infrastructure being deployed by Spire Missouri. Mr. Rieske's response was that the average service life of an ultrasonic meter is 20 years. This response contradicts Spire Missouri's other response.[237]

187. Spire Missouri recommended in the rebuttal testimony of Mr. Spanos changes to the newly created smart meter and smart meters installation accounts that were not supported by any historical analysis since the first meters were installed in mid-year 2020.[238]

188. In File No. GO-2020-0416, Spire Missouri requested a Depreciation Authority Order for the smart meters and smart meter installations. The depreciation rate was established on the basis of the smart meters having a battery life of 20 years.[239]

Diaphragm meters

189. Spire Missouri's witness testified that their diaphragm meters currently have an actual life of approximately 18.8 years for Spire East and 22.1 years for Spire West.[240]

190. Spire Missouri has used a range of 33 years to 37 years for the depreciable life of its diaphragm meters in its depreciation studies since 2003.[241]

[236] Ex. 202, Robinett surrebuttal, p. 22, lns. 5-12.
[237] Ex. 202, Robinett surrebuttal, p. 22, lns. 18-20.
[238] Ex. 202, Robinett surrebuttal, p. 22, lns. 2-5.
[239] Ex. 128, Buttig surrebuttal, p. 8, lns. 20-22.
[240] Tr. Vol. 11, pp. 230, 232-233 and 253-255.
[241] Ex. 202, Robinett surrebuttal, pp. 15-16.

191. A 35-year depreciable life for meters is the recommendation of Spire Missouri in the Depreciation Study in the present case.[242]

192. Spire Missouri intends to retire existing diaphragm meters that are removed for testing within the meter sampling process, even if they meet the accuracy standard.[243]

193. Replacement of a meter prior to its depreciation being fully realized, will result in stranded costs.[244]

194. Spire Missouri agrees that the disconnect between the diaphragm meter depreciation and the practical life of a diaphragm meter needs to be analyzed and discussed with Staff and interested parties.[245]

195. Meters removed for accuracy testing have been retired by Spire Missouri when still testing accurately for the following reasons: fundamentally the Company has found that refurbishing a meter is not cost effective when all of the cost factors are considered from the time a meter is removed to the time it is delivered to be reinstalled; the meter condition was such that refurbishment simply was not possible or practical; and the meter was of a type and size that is no longer used by Spire. For example, meters sized below a capacity of 250 CFH are no longer used in any Spire region.[246]

196. OPC proposes that the Commission has several options with how to handle the potentially large reserve shortfall for current diaphragm meters. The Commission could just order a depreciation rate consistent with the current recommendations of all the parties. This option is supported by the fact that no parties have discussed how the

[242] Ex. 35, Spanos rebuttal, Schedule JJS-R2, p. 51 of 396.
[243] Ex. 202, Robinett surrebuttal, p. 14, lns. 28-32.
[244] Ex. 201, Robinett rebuttal, p. 12, lns. 1-12; Ex. 115, Luebbert rebuttal, p. 5, lns. 10-11.
[245] Ex. 202, Robinett surrebuttal, p. 14, lns. 12-15.
[246] Ex. 202, Robinett surrebuttal, p. 14, lns. 15-26.

stranded asset should be handled and all parties will have a better understanding of the true magnitude of the shortfall in the next rate case.[247]

197. OPC's additional proposed options include a depreciation rate adjustment, creation of a regulatory asset for the remaining uncollected balance, disallowance of a portion of the remaining investment or implementing a hybrid method.[248]

Conclusions of Law regarding Depreciation – Issue 24

Smart meters

CC. The smart meter and smart meter installation depreciation rates, Accounts 381.1 and 382.1, respectively, were authorized by the Commission in File No. GO-2020-0416, *Order Approving Application for Depreciation Authority Order*, which became effective on October 16, 2020, and has not been rescinded or altered.

Enterprise Software

DD. The Enterprise Software rates were ordered by the Commission in File No. GO-2012-0363, which set the life of the Enterprise Software at 15 years. The *Report and Order,* effective October 13, 2012, has not been rescinded or altered.

Decision regarding Depreciation – Issue 24

The Commission finds that Spire Missouri's Depreciation Study should be adopted, with specific modifications. Those modifications to the Depreciation Study are as follows: General Plant amortization is not authorized; Enterprise Software will remain at a 15-year life; plastic mains will remain at a 75-year life; and Smart Meters will remain at a 20-year life.

[247] Ex. 202, Robinett surrebuttal, pp. 16-17.
[248] Ex. 202, Robinett surrebuttal, pp. 17-18.

OPC's recommendation to use Spire East's existing depreciation rates from 2012 for both Spire East and Spire West is contrary to the established practice of matching depreciation rates to assets in service. It is not appropriate to ignore the depreciation factors affecting Spire West when combining the two. That generally leaves the Commission to choose between adopting, with modifications, Spire Missouri's Depreciation Study or Staff's depreciation study. Staff's depreciation study uses the information from Spire Missouri's Depreciation Study as its basis. Spire Missouri's Depreciation Study was conducted in 2020, and is based on the most commonly used methods and procedures for determining depreciation rates. Spire Missouri's Depreciation Study also looks at the combined utility assets of both the Spire West and Spire East service areas. The Commission finds Spire Missouri's Depreciation Study to be the more persuasive evidence.

The Commission finds that Spire Missouri's proposal for amortization of the general plant accounts is not appropriate as General Plant account amortization threatens the ability to perform any sort of prudence review of plant added into these accounts because it fails to track retirement units and original costs. It is also inappropriate as weighted average values for depreciation rates, as opposed to amortization rates, do not over-recover. An over-recovery would happen with Spire Missouri's proposed amortization as the Company does not have an account set up for the assets that have fully accrued, thus those asset amounts would still be included in the amortized values. And it is inappropriate as General Plant Amortization will only produce historical data for depreciation that matches the amortization period for the selected account. This is a problem because the amortization periods may or may not match the useful life of the

assets. In other words, the data will only show the retirements booked in strictly dollar amounts and will not show retirement of any actual physical assets.

The Commission finds that 12.35% is the appropriate depreciation rate to be used for cast iron main account. Spire Missouri's proposed rate was the most reasonable, accounting for the legislation sunset, and remaining consistent on salvage costs. There was not enough evidence in the record for the Commission to fully evaluate OPC's proposed higher salvage costs.

The Commission finds that a 15-year life is the appropriate service life to assign to Enterprise Software, as established in GO-2012-0363. Spire Missouri referred to the service life for the original Enterprise Software and subsequent applications not reaching the 15-year threshold, but without details as to what shortcomings are attributable to which applications. The Commission, however, notes that Enterprise Software has not yet reached the 15-year threshold. The Commission's October 3, 2012 *Report and Order* in File No. GO-2012-0363, notes that Laclede Gas Company was in the process of implementing the Enterprise Software.[249] This sets the current age of the Enterprise Software at approximately 9 years.

The Commission finds that the depreciable life of plastic mains should remain at 75 years, as this has been established as the lifespan in prior Commission cases, and no argument was raised to cause the Commission to change the authorized service life of plastic mains.

[249] GO-2012-0363, *Report and Order*, issued October 3, 2012, p. 4, Finding of Fact 1.

The Commission finds that the appropriate Smart Meter depreciation rate is that agreed to by all parties and previously authorized by the Commission in File No. GO-2020-0416.

Lastly, the Commission is presented in this case with evidence that the real-world life expectancy of Spire Missouri's diaphragm meters is falling short of the historical life expectancy of diaphragm meters assigned for depreciation purposes. Stranded assets result when a meter with expected life is replaced earlier than the expiration of its expected service life. Although it came to light during testimony regarding ultrasonic meters, this situation of stranded assets was not created by the introduction of ultrasonic meters. Because the stranded assets issue was discovered tangential to another issue in the case, it did not receive sufficient attention from the parties for the Commission to make an informed finding. Therefore, the Commission will allow the evidence on this issue to continue to develop and will look forward to Spire Missouri's proposed solution in its next rate case.

Findings of Fact regarding Affiliate Transactions - Issue 19

198. Spire Inc., the parent company of Spire Missouri, owns subsidiary companies across the United States that include regulated and non-regulated operations. While some of these entities have employees and facilities dedicated to each business segment, there are instances where costs are incurred by one business segment that benefits a different, or multiple, business segment(s). For example, the time spent by the executive leadership is properly attributable to all business segments of Spire Inc. since executives are charged with leading the company as a whole.[250]

[250] Ex. 101, Staff Cost of Service Report, p. 47, lns. 11-20.

199. To account for the costs that are common across multiple business units, Spire Inc. implemented a shared service model. Under this model, costs that are incurred on behalf of a different, or more than one, business unit are charged to the shared services entity (Spire Services Inc.) so that the costs can accumulate in shared cost pools. At the end of each period, the cost pools are distributed back to the business segments based on the various cost drivers. Types of costs accounted for under this methodology include the labor and non-labor costs of executive and corporate, finance, human resources, information technology, legal, insurance, supply chain, facilities, marketing, project management, external affairs, customer experience, business development, and other costs.[251]

200. Spire Inc. and Spire Services Inc. do not have a material corporate purpose separate and apart from the operations and lines of businesses of their regulated and non-regulated affiliates.[252]

201. Costs are distributed to the appropriate business segments by the use of several types of allocation factors. These allocation factors are updated annually and include allocators to spread costs corporate-wide (all business units), utility only (regulated operations), Missouri only (Spire Missouri and nonregulated operations), and Missouri utility only (Spire Missouri). Furthermore, these allocation factors can be derived from various cost drivers including employee headcount, customer count, square footage used, fixed assets, and many others. When a cost pool has no identifiable cost driver, the

[251] Ex. 101, Staff Cost of Service Report, p. 47, lns. 21-28.
[252] Ex. 117, Majors rebuttal, p. 6, lns. 3-5.

shared services model allocates costs based on a three factor allocator that is a blend of fixed assets, revenue, and wages.[253]

202. Laclede Gas Company filed its application with the Commission to restructure itself into a holding company (now Spire Inc.), regulated utility company, and unregulated subsidiaries on December 1, 2000, in File No. GM-2001-342.[254]

203. Spire Inc.'s purpose is to own shares of other companies.[255]

204. Due to the corporate structure of Spire Inc., all transactions under the term "corporate allocations" are affiliate transactions, and must comply with the Commission's affiliate transaction rules.[256]

205. The primary purpose of the restructuring was to establish an optimal corporate structure that would permit Laclede Gas Company, now Spire Missouri, to more effectively pursue both its regulated utility obligations as well as the unregulated business opportunities afforded by increased competition in the energy industry and other developments.[257]

206. Laclede Gas Company was the parent prior to restructuring, operating as a regulated utility with both regulated and nonregulated subsidiaries.[258]

207. The proposed holding company structure designated The Laclede Group, Inc. as the holding company with Laclede Gas Company separate and apart from its previous subsidiaries.[259]

[253] Ex. 101, Staff Cost of Service Report, pp. 47-48.
[254] Ex. 226, Application of Laclede Gas Company to Restructure into a Holding Company.
[255] Ex. 16, Krick rebuttal, p. 8, lns. 11-12.
[256] Ex. 135, Majors surrebuttal, p. 8, lns. 8-10.
[257] Ex. 226, Application of Laclede Gas Company to restructure into a Holding Company, p. 5, para. 13.
[258] Ex. 226, Application of Laclede Gas Company to restructure into a Holding Company, p. 3, para. 6.
[259] Ex. 226, Application of Laclede Gas Company to restructure into a Holding Company, pp. 3-4, para. 7.

208. The current Spire Inc. enterprise is quite different from the entity that existed at the time of the filing of the Holding Company Application in GM-2001-342.[260]

209. Spire Services Inc. functions as a clearinghouse to properly allocate and charge costs for goods and services between the Spire Inc. subsidiaries.[261]

210. Through Staff's payroll annualization, a substantial portion of the salaries and wages of Spire Missouri employees are allocated to various Spire Inc. affiliates, both regulated and non-regulated using the three-factor allocator, which uses an average of fixed assets, revenues and wages.[262]

211. Staff adjusted some Board of Director expenses and eliminated stock based compensation from Spire Missouri's cost of service.[263]

212. Spire Missouri provided $221 million of goods and services that were allocated between itself and other Spire Inc. affiliates during the test year. Of the total goods and services, $52.3 million were allocated to regulated and non-regulated affiliates.[264]

213. OPC proposed an $84 million adjustment. This is 50% of the Spire Missouri goods and services that were not allocated to affiliates, less $355,611 charged to Spire Inc.[265]

214. OPC does not identify the basis, allocation factor, or any other support for a 50% re-allocation.[266]

[260] Ex. 203, Schallenberg direct, p. 10, lns. 1-3.
[261] Ex. 117, Majors rebuttal, p. 2, lns. 13-15.
[262] Ex. 117, Majors rebuttal, p. 3, lns. 26-28.
[263] Ex. 117, Majors rebuttal, p. 4, lns. 13-14.
[264] Ex. 203, Schallenberg direct, pp. 13-14.
[265] Ex. 117, Majors rebuttal, p. 5, lns. 11-20.
[266] Ex. 117, Majors rebuttal, p. 5, lns. 20-22.

215. The majority of the $355,611 of personnel costs allocated to Spire Inc. in 2020 were associated with certain non-utility activities in the areas of Legal and Information Technology that were expensed at Spire Inc. and not reallocated to an affiliate.[267]

216. The purpose of 20 CSR 4240-40.015, the Commission's Gas Utilities' Affiliate Transactions Rule (ATR) is to prevent regulated utilities from subsidizing their non-regulated operations.[268]

217. Use of service companies to obtain necessary corporate support services for multiple entities under a holding company structure is a common practice for utilities.[269]

218. The creation of Spire Services Inc. allowed Spire to merge many of its plans to achieve alignment of benefits for employees, cost savings, and administrative efficiencies.[270]

219. The merger of Spire's health and welfare plans, and its 401(k) plan has benefited from economies of scale.[271]

220. Spire Services Inc. is different from Ameren Services because it has no employees while Ameren Services has employees.[272]

221. Spire Missouri does not charge a profit on the services provided to affiliates nor does it pay a mark-up on services received.[273]

[267] Ex. 203, Schallenberg direct, p. 15, lns. 6-9.
[268] Ex. 135, Majors surrebuttal, p. 8, lns. 11-14.
[269] Ex. 135, Majors surrebuttal, p. 9, lns. 20-21.
[270] Ex. 15, Krick direct, p. 5, lns. 8-22.
[271] Ex. 15, Krick direct, p. 5, lns. 17-20.
[272] Tr. Vol 11, pp. 369-370, and 403-404.
[273] Ex. 135, Majors surrebuttal, p. 10, lns. 16-22.

222. Spire Missouri's Cost Allocation Manual (CAM) came into being as a result of a Stipulation and Agreement that included the proposed CAM. That Stipulation and Agreement was approved by the Commission in 2013.[274]

223. The Commission last approved Spire Missouri's CAM in 2013.[275]

224. Spire Missouri's current cost assignment and allocation procedures are reasonable and result in equitable compensation.[276]

225. There is a project underway to evaluate changing the employer of several hundred employees that normally provide services to more than one subsidiary, or those that fall into traditional corporate service functions to Spire Services Inc.[277]

226. The Spire Missouri 2020 annual CAM report lists and describes all Spire Missouri functions that provide support to nonregulated affiliates and the holding company.[278]

227. The Spire Missouri 2020 annual CAM report lists procedures used to measure and assign costs to nonregulated affiliates and the holding company for functions that do not match those functions listed on pages 3-32 of the Spire Missouri 2020 annual CAM report.[279]

[274] Ex. 203, p. 8-9; File No. GC-2011-0098, *Order Approving Stipulation and Agreement, Granting Waiver, and Approving Cost Allocation Manual*, issued August 14, 2013.
[275] *Joint Stipulation of Facts*, filed July 19, 2021, para. 13.
[276] Ex. 117, Majors rebuttal, p. 7, lns. 14-16.
[277] Ex. 15, Krick direct, pp. 4-5.
[278] Spire Missouri 2020 annual CAM report, pp. 3-32. Note the Commission admitted Ex. 231, which was the 'skinny' version of Spire Missouri's 2020 annual CAM report, but took official notice of the entire 2020 annual CAM report. *See,* Tr. Vol. 11, p. 392, lns. 10-14.
[279] Spire Missouri 2020 annual CAM report, p. 33.

228. The Spire Missouri 2020 annual CAM report lists and describes each service and good provided to Spire Missouri from each affiliate and the holding company.[280]

229. The Spire Missouri 2020 annual CAM report lists and describes each of six services and goods provided by Spire Missouri to each affiliate and the holding company.[281]

230. The Spire Missouri 2020 annual CAM report lists twelve services and goods charged by Spire Missouri in total dollar amounts to each affiliate and the holding company. The total cost to Spire Missouri related to each service and good is also provided. These services and goods provided by Spire Missouri do not match those listed on page 35 of the Spire Missouri 2020 annual Cam report.[282]

231. The Spire Missouri 2020 annual CAM report lists the dollar amount of each service and good purchased from each affiliate and the holding company by Spire Missouri and the total cost related to each service and good listed.[283]

232. The Spire Missouri 2020 annual CAM report lists and describes each line of business engaged in by Spire Missouri with non-affiliated third party customers following formation of a holding company and that would not reasonably be considered as a component of its regulated utility business.[284]

[280] Spire Missouri 2020 annual CAM report, p. 34.
[281] Spire Missouri 2020 annual CAM report, p. 35.
[282] Spire Missouri 2020 annual CAM report, pp. 36-40.
[283] Spire Missouri 2020 annual CAM report, p. 40.
[284] Spire Missouri 2020 annual CAM report, p. 41.

233. The Spire Missouri 2020 annual CAM report provides the total amount of revenues and expenses for each Spire Missouri nonregulated activity for the last fiscal year.[285]

234. The Spire Missouri 2020 annual CAM report provides all jurisdictions in which Spire Missouri, the holding company, affiliates and service company, if formed, file affiliate transaction information.[286]

235. The Spire Missouri 2020 annual CAM report shows an organizational chart for Spire (corporate structure), Spire Missouri and any other affiliate doing business with Spire Missouri.[287]

236. The Spire Missouri 2020 annual CAM report lists executive officers and the Spire organization by function.[288]

237. The Spire Missouri 2020 annual CAM report lists employee assignments from Spire Missouri to other affiliates during 2020.[289]

238. The Spire Missouri 2020 annual CAM report lists Spire Services Inc.'s allocation factors by allocation type and operating unit for fiscal years 2018, 2019, and 2020. [290]

[285] Spire Missouri 2020 annual CAM report, p. 42.
[286] Spire Missouri 2020 annual CAM report, p. 43.
[287] Spire Missouri 2020 annual CAM report, p. 44.
[288] Spire Missouri 2020 annual CAM report, p. 45.
[289] Spire Missouri 2020 annual CAM report, p. 46.
[290] Spire Missouri 2020 annual CAM report, Appendix A, pp. 49-53.

Conclusions of Law regarding Affiliate Transactions – Issue 19

EE. Transactions between Spire Missouri and Spire Inc. are subject to the Commission's affiliate transaction rule, 20 CSR 4240-40.015, as well as subject to Spire's CAM, which is Commission approved.[291]

FF. The content of the CAM must set "forth the cost allocation, market valuation and internal cost methods".[292]

GG. Commission Rule 20 CSR 4240-40.015 (in pertinent parts) states:

> (1) Definitions.
> (D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.
>
> (2) Standards.
> (A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if—
> 1. It compensates an affiliated entity for goods or services above the lesser of—
> A. The fair market price; or
> B. The fully distributed cost to the regulated gas 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 gas corporation.
> (B) Except as necessary to provide corporate support functions, the regulated gas 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.

HH. Spire Missouri's CAM requires, for each good and service provided to Spire Missouri by an affiliate entity or provided by Spire Missouri to an affiliate entity, the dollar

[291] File No. GC-2011-0098.
[292] 20 CSR 4240-40.015(3)(D).

amount of each transaction, including the Uniform System of Accounts (USOA) account charged, be included in the annual CAM report.[293]

II. Spire Missouri's CAM requires Spire Missouri to annually report the basis used (e.g. fair market price, fully distributed cost, etc.) when it records each affiliate transaction.[294]

JJ. Spire Missouri's CAM requires Spire Missouri to maintain books and records sufficient to permit verification of compliance.[295]

KK. Spire Missouri's Commission-approved CAM, which uses its predecessor name of Laclede Gas Company, states that facilities, goods or services, including shared services provided by Laclede Gas Company to an affiliate, shall be charged by Laclede Gas Company at the greater of the fair market price of such facility, good or service or at the fully distributed cost incurred by Laclede Gas Company in providing such facility, good or service to itself.[296]

LL. Spire Missouri's CAM states that facilities, goods or services provided to Laclede Gas Company by an affiliated provider shall be charged to Laclede Gas Company at the lesser of the fair market price for such facilities, goods or services or the fully distributed cost to Laclede Gas Company to provide the facilities, goods or services to itself.[297]

MM. Spire Missouri's CAM transfer pricing and costing methodology identifies the allocation methods to be applied for indirect costs. The allocation of Board of Director

[293] Ex. 228, Spire Missouri's CAM, p. 3, para. 2.
[294] Ex. 228, Spire Missouri's CAM, pp. 3-4, para. 4.
[295] Ex. 228, Spire Missouri's CAM, p. 4, para. 5.
[296] Ex. 228, Spire Missouri's CAM, p. 11, para. IX.A(ii).
[297] Ex. 228, Spire Missouri's CAM, p. 10, para. IX.A(i).

fees between affiliates are to be based on the three component allocator, fixed assets, revenues and wages.[298]

NN. Spire Missouri's CAM includes descriptions of allocation methodologies to be applied to indirect costs shared by affiliates of the regulated utility.[299]

OO. The Commission directed Spire Missouri to rewrite its CAM in Spire Missouri's prior rate cases, File Nos. GR-2017-0215 and GR-2017-0216.[300]

Decision regarding Affiliate Transactions – Issue 19

The Commission finds that allocation factors used by Spire Missouri to charge affiliates and the holding company for the goods and services it provides are being appropriately assigned. However, the Commission's review of Spire Missouri's 2020 annual CAM report found several reporting requirements of Spire Missouri's CAM to be missing that are critical in demonstrating Spire Missouri's compliance with the Commission's Affiliate Transactions Rule, and thus the Commission will order an investigatory docket be opened for Staff to report on Spire Missouri's CAM compliance.

There is insufficient evidence in the record to support an $84 million adjustment. While OPC argues that number represents the estimated costs that Spire Inc. did not pay for goods and services produced on its behalf by Spire Missouri,[301] the Commission finds that there was no evidence showing a basis, allocation factor, or any other driver to account for the 50% adjustment. The Commission cannot order an adjustment without sufficient evidentiary support. Even if the Commission were to find issue with the pricing

[298] Ex. 228, Spire Missouri's CAM, p. 16.
[299] Ex. 228, Spire Missouri's CAM, pp. 10-19.
[300] File No. GR-2017-0215 and 0216, *Amended Report and Order*, pp. 58-60.
[301] Ex. 205, Schallenberg surrebuttal, p. 2, lns. 11-13.

of goods and services between Spire Missouri and its affiliates no credible evidence to support any such adjustment to address pricing issues has been provided.

OPC also argued in favor of a $1 million adjustment to be credited to Spire Missouri for creation of market value. OPC's argument is that Spire Missouri creates market value through its operation of Spire Services Inc. The Commission found more credible the testimony that the current service company structure results in an equitable distribution of any economies of scale to all affiliates, thus no adjustment for creation of market value specific to Spire Missouri is necessary.

Since testimony indicated that Spire Services Inc. will be transferring other employees from its affiliates, this will likely have an effect on Spire Missouri. As such, the Commission will order Spire Missouri to report on updates to its employee transfer project.

Lastly, the Commission will restate its order given in 2018 for Spire Missouri to rewrite its CAM. The ordered rewrite has not yet been completed. File No. GW-2018-0367 was opened on June 13, 2018, and held a workshop on rewriting Spire Missouri's CAM on October 15, 2018. That was the last action documented in the case. The parties have had over three years since the opening of File No. GW-2018-0367 to produce a rewritten CAM, and there have been no requests from any party to delay the proceedings. Therefore, the Commission will order a draft CAM be filed in File No. GW-2018-0367 for Commission approval no later than six months from the effective date of this order.

Findings of Fact regarding Capitalized Overheads – Issue 15

239. Capitalized overheads are costs that are indirectly related to a capital project that the utility has elected to capitalize rather than to expense (e.g. engineering, legal work, insurance, taxes, interest, etc.).[302]

240. In recent ISRS cases OPC has raised a concern about the amount of overheads. The issue was deferred to this rate case.[303]

241. As a subsidiary of a publicly traded corporation, Spire Missouri follows accounting methods prescribed by Generally Accepted Accounting Principles (GAAP) and as a gas utility regulated by Missouri, Spire Missouri must also follow the accounting methods prescribed by the FERC USOA.[304]

242. While some costs are clearly either expenses or capital expenditures in nature, Spire Missouri has discretion to assign many costs as it chooses.[305]

243. Without Spire Missouri completing the special study of the supervisor timecard distributions, described in USOA Gas Plan Instructions, Section 4(B), there is no way to determine an appropriate capital transfer rate, based on the USOA requirements.[306]

244. A consequence of the single-issue ratemaking nature of the ISRS is that it creates an incentive to maximize the overhead costs charged to ISRS eligible work orders.[307]

[302] Ex. 125, Young rebuttal, pp. 1-2.
[303] ISRS cases, File Nos.GO-2019-0356 and GO-2019-0357.
[304] Ex. 101, Staff Cost of Service Report, p. 31, lns. 2-5.
[305] Ex. 101, Staff Cost of Service Report, p. 31, lns. 8-9.
[306] Tr. Vol. 10, p. 161, lns. 16 – 24.
[307] Ex. 125, Young rebuttal, p. 3, lns. 6-8.

245. Spire Missouri applies the same capital transfer rate to injuries and damages insurance, nearly the entire office supplies account, and directors and officers insurance despite the varying relationship of those costs to construction.[308]

246. Removing the capitalized Administrative and General overheads and instead treating those costs as expenses would increase the revenue requirement by nearly $115 million; about $50 million attributable to General Overheads, and the remaining $65 million to Employee Benefit and Pension Costs.[309]

247. Staff has not made any adjustment in its proposed cost of service to transfer capitalized overhead costs to expense.[310]

248. Spire Missouri provided a copy of the general ledger as its transaction level support for all of its capitalized overhead costs.[311]

249. Spire Missouri did not produce specific time reporting or cost studies supporting its capitalized overheads as required by the USOA to support that its overhead policy and procedure have a definite relationship to construction and are eligible to be capitalized.[312]

250. It would be impossible to estimate an impact on customers without performing the overhead cost study. It could lead to a rate increase, decrease, or no material change. Spire Missouri recommends the results of any study to determine the relationship of overhead costs to construction projects be brought forward in the filing of

[308] Ex. 140, Young surrebuttal, p. 16, lns. 14-16.
[309] Ex. 17, Krick surrebuttal, p. 7, lns. 6-15.
[310] Tr. Vol. 10, 146, lns. 16-25.
[311] Ex. 17, Krick surrebuttal, p. 9, lns. 3-5.
[312] Ex. 203, Schallenberg direct, p. 24, lns. 12-19.

the next rate case, and any changes to indirect overhead allocations be implemented on a prospective basis during that future case when establishing rates.[313]

251. A retrospective order removing capitalized overhead amounts back to October 1, 2019, as initially proposed by OPC would result in a write-off of overhead costs capitalized to plant-in-service during the test year of approximately $87 million.[314]

252. Labor that is direct charged to a construction project is not considered an overhead.[315]

253. Spire Missouri's time reporting system allows each employee to code their time directly to a capital project, an income statement-related activity, or a clearing account.[316]

254. Instead of conducting studies of the time charged to clearing accounts by its employees, Spire Missouri uses the direct labor charges as the basis of distributing overhead payroll costs.[317]

255. In September 1988, the National Association of Regulatory Utility Commissioners (NARUC) issued "Interpretation of Uniform System of Accounts for Electric and Gas Utilities." Interpretation No. 59 answers questions regarding the methods used for the capitalization of administrative and general expenses, specifically the use of proportional direct charges.[318]

[313] Ex. 17, Krick surrebuttal, pp. 10-11.
[314] Ex. 17, Krick surrebuttal, p. 12, lns. 7-9.
[315] Ex. 140, Young surrebuttal, p. 17, lns. 1-2.
[316] Ex. 140, Young surrebuttal, p. 17, lns. 2-3.
[317] Ex. 140, Young surrebuttal, p. 17, lns. 8-10.
[318] Ex. 140, Young surrebuttal, pp. 17-18.

256. NARUC endorses the use of the incremental cost method which identifies a relationship of a capital cost to construction by proving the cost would not have been incurred if the construction was not undertaken.[319]

257. Spire Missouri has relied exclusively on an arbitrary relationship between direct and indirect labor to account for overhead payroll costs, and the related payroll benefits that follow payroll.[320]

258. Spire Missouri uses a concept called 'cost elements' to charge work orders. Those cost elements are lost by the time construction-work-in-process is unitized to the FERC plant accounts.[321]

259. Spire Missouri does not keep records sufficient to show each overhead cost in its utility plant account and also has not provided support to show the bases used to distribute its overheads.[322]

260. It is not reasonable to assume the time devoted to capital projects of field employee supervisors and their supervisors is dictated by the field employee direct labor charged to the same capital projects. Therefore, Spire Missouri has not provided support for its indirect labor assigned to capitalized overheads.[323]

261. The label "non-operational overhead costs" is one of three capital cost categories presented by Spire Missouri and represents costs that are not direct charges and not related to field operations.[324]

[319] Ex. 140, Young surrebuttal, p. 18, lns. 5-8.
[320] Ex. 140, Young surrebuttal, p. 19, lns. 1-6.
[321] Ex. 140, Young surrebuttal, p. 19, lns. 11-14.
[322] Ex. 140, Young surrebuttal, p. 19, lns. 14-16.
[323] Tr. Vol. 10, p. 149, lns. 2-19.
[324] Ex. 140, Young surrebuttal, p. 21, lns. 3-5.

262. Staff's definition of non-operational overhead costs is derived from the direct testimony of Spire Missouri's witness, Krick in File Nos. GO-2019-0356 and GO-2019-0357.[325]

263. Non-operational overhead costs are employee benefits, shared services and administrative and general expenses.[326]

264. Non-operational overheads include engineering, the corporate engineering function, new growth support and other corporate type costs.[327]

265. Spire Services Inc.'s costs allocated to capitalized overheads are a subset of non-operational overhead costs.[328]

266. Non-operational overhead costs would be almost the entire list of overhead costs listed by OPC witness, Schallenberg in his direct testimony, Schedule RES-D-4.[329]

267. For Staff to be able to audit and determine Spire Missouri's compliance with the USOA, Spire Missouri would need to provide records of its plant accounts identifying the nature and amount of each overhead cost. The Staff would also require documentation to support the basis of the relationship the cost has to each construction project.[330]

268. OPC proposes a tracker be authorized to ensure that Spire Missouri's general overhead is not allowed to be over-recovered by transferring overheads to construction by an amount causing overhead expense to be less than the amount included in base rates in this case.[331]

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[325] Tr. Vol. 10, p. 162-163.
[326] Tr. Vol. 10, p. 162-163.
[327] Tr. Vol. 10, p. 163, lns. 16-24.
[328] Tr. Vol. 10, p. 164, lns. 3-6.
[329] Tr. Vol. 10, p. 164-165.
[330] Tr. Vol. 10, p. 165, lns. 7-18.
[331] Ex. 203, Schallenberg direct, p. 25, lns. 19-21.

269. Staff's proposal envisions that it, Spire Missouri and OPC would provide status reports to the Commission as Spire Missouri provides documents that can be audited by Staff and can demonstrate Spire Missouri's compliance with the USOA and then implement the new capitalized overhead process in Spire Missouri's next rate case.[332]

270. Staff does not include a recommendation that disallowed overhead costs be captured in a tracker mechanism as expenses to be included Spire Missouri's next rate case.[333]

Conclusions of Law regarding Capitalized Overheads – Issue 15

PP. The USOA Gas Plant Instruction, section 4, provides (in pertinent part):

4. Overhead construction costs.

> A. All overhead construction costs . . . shall be charged to particular jobs . . . on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs . . .
>
> B. As far as practicable, the determination of pay roll charges includible in construction overheads shall be based on time card distributions thereof. Where . . . impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities to the end that only such overhead costs as have a definite relation to construction shall be capitalized. The addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted.
>
> C. The record supporting the entries for overhead construction costs shall be so kept as to show the total amount of each overhead for each year, the nature and amount of each overhead expenditure charged to each construction work order and to each utility plant account, and the bases of distribution of such costs.

[332] Tr. Vol. 10, p. 153, lns.7-21.
[333] Tr. Vol. 10, p. 155, lns. 2-7.

QQ. The USOA provides a list of costs that are eligible for capitalization in Gas Plant Instruction 3, and limits the indirect costs eligible for capitalization to an appropriate amount in Gas Plant Instruction 4.[334]

RR. Spire Missouri is not in compliance with Gas Plant Instructions 3(A)(3) treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.[335]

SS. Spire Missouri is not in compliance with Gas Plant Instructions 3(A)(19) eligibility requirements for training costs when it includes generic training to construction accounts.[336]

TT. Gas Plant Instruction 4(A) limits overhead construction costs to appropriate amounts by requiring the overheads "shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs . . ."[337]

UU. Gas Plant Instruction 4(C) requires records of construction work orders and utility plant accounts to be maintained so that the total amount of each overhead, the nature and quantity of each overhead that is charged to each work order and each plant account, as well as the basis of distributing the overhead costs, can be shown.[338]

VV. Gas Plant Instruction 4(B) requires the use of time card distributions as a basis of assigning overhead payroll to construction.[339]

[334] Ex. 140, Young surrebuttal, p. 14, lns. 20-22.
[335] Ex. 140, Young surrebuttal, p. 15, lns. 7-14.
[336] Ex. 140, Young surrebuttal, p. 15, lns. 15-21.
[337] Ex. 140, Young surrebuttal, p. 16, lns. 6-9.
[338] Ex. 140, Young surrebuttal, p. 19, lns. 7-11.
[339] Ex. 140, Young surrebuttal, p. 17, lns. 6-7.

WW. Gas Plant Instruction 4(B) states that the indirect payroll of supervisors should be capitalized "to the end that only such overhead costs as have a definite relation to construction shall be capitalized."[340]

XX. Gas Plant Instruction 4(B) prohibits the use of arbitrary percentages to cover assumed overhead payroll costs.[341]

Decision regarding Capitalized Overheads – Issue 15

The Commission finds that Spire Missouri is not properly capitalizing overheads. Spire Missouri's cost elements, which it uses to charge work orders, are lost by the time construction-work-in-process is unitized to the FERC plant accounts. Without those cost elements, the Commission cannot find the record support for entries for overhead construction costs required by the USOA Gas Plant Instruction 4(C). Therefore, the Commission has no choice but to find that Spire Missouri has failed to meet its burden that it is in compliance with USOA Gas Plant Instructions and properly capitalizing overheads.

The Commission will order Spire Missouri to cease recovery of capitalized non-operational overhead costs in plant, going forward, until Spire Missouri's compliance with the USOA is shown. Non-operational overheads associated with plant additions to be recognized as used and useful after the effective date of Spire Missouri's tariff sheets may be posted to a regulatory asset account. This will allow changes to indirect overhead allocations to be implemented on a prospective basis in either ISRS filings or Spire Missouri's next rate case. Without Staff's audit of Spire Missouri's compliance with the USOA and Spire Missouri's performing the required study it is not known whether the

[340] Ex. 140, Young surrebuttal, p. 16, lns. 18-20.
[341] Ex. 140, Young surrebuttal, p. 16, lns. 20-21.

impact will lead to a rate increase, decrease or no material change. However, this treatment will prevent inclusion of non-operational overhead costs that are ultimately determined to be inappropriate from being included in plant additions recovered through ISRS cases before the resolution of this issue in Spire Missouri's next rate case.

Staff shall develop a list of deliverables needed from Spire Missouri for it to be able to audit source documents and any other documents necessary to support all overhead costs and the rationale and basis for overhead allocations, to where Staff can determine that Spire Missouri is in compliance with the USOA Plant Instructions capitalized overhead requirements. OPC may confer with Staff in the development of the list of deliverables. Staff, Spire Missouri, and OPC will provide status reports of the progress in Staff's completion of its audit and determination that Spire Missouri is in compliance with the USOA Plant Instruction overhead cost requirements.

The recognition of disallowed capitalized overheads as expenses of Spire Missouri will not be recoverable outside of a rate case test period. The potential recovery of any of the disallowed capitalized non-operational overheads as expenses that remain in the regulatory asset account through the test year, update or true-up period of Spire Missouri's next rate case will be reviewed by the Commission during that rate case. Overhead costs determined to be in compliance with the USOA Plant Instruction requirements shall be included in rate base at the first opportunity, whether in an ISRS case or rate case.

Findings of Fact regarding Cost of Capital – Issue 1

Capital Structure

271. Spire Missouri's current capital structure as of May 31, 2021, is 54.28% equity and 45.72% long-term debt.[342]

272. No obligation of Spire Missouri is guaranteed by Spire Inc. (or vice versa).[343]

273. The Society of Utility and Regulatory Financial Analysts (SURFA) lists four guidelines for determining when to use a parent company's capital structure in its guidebook, the Cost of Capital – A Practitioner's Guide. The four guidelines are:

a. Whether the subsidiary utility obtains all of its capital from its parent, or issues its own debt and preferred stock;

b. Whether the parent guarantees any of the securities issued by the subsidiary;

c. Whether the subsidiary's capital structure is independent of its parent (i.e., existence of double leverage, absence of proper relationship between risk and leverage of utility and non-utility subsidiaries); and,

d. Whether the parent (or consolidated enterprise) is diversified into non-utility operations.[344]

274. Staff's analysis, based on the SURFA guidelines, concluded that it is appropriate to base the ratemaking capital structure on Spire Missouri's actual capital structure and not Spire Inc.'s actual capital structure.[345]

[342] Ex. 60, Woodard true-up direct, p. 2, lns. 6-9.
[343] Ex. 45, Woodard surrebuttal, p. 11.
[344] Ex. 124, Won rebuttal, p. 41, lns. 3-15
[345] Ex. 124, Won rebuttal, p. 41, ln 16 through p. 42 ln 2.

275. Spire Missouri issues its own long-term debt secured by its own assets.[346]

276. Spire Missouri manages its capital structure to represent the capital structure that was approved by the Commission in the last rate case.[347]

277. Spire Missouri has an independently determined capital structure.[348]

278. Spire Inc. is diversified into non-utility operations; however, they comprise just under 10% of Spire Inc.'s businesses. These non-utility operations include Spire Marketing, Spire Storage, Spire STL Pipeline, and other business segments which are not regulated by the Commission.[349]

Short-Term Debt

279. Spire Missouri refunded some of its short-term debt[350] using funds from the $305 million bonds issued on May 20, 2021, at the close of the true-up period in the current case.[351]

280. Spire Missouri converted $170 million in short-term debt to long-term debt at the close of the test year in the prior rate case.[352]

281. Some of Spire Missouri's short-term debt comes from Spire Inc.[353]

282. Spire Missouri's cost of short-term debt was 0.29% as of March 31, 2021.[354]

[346] Ex. 44, Woodard rebuttal, p. 6.
[347] Ex. 216, Murray rebuttal, p. 3 lns. 1-7, quoting Spire's answer to DR 0115.
[348] Ex. 44, Woodard rebuttal, p. 6; Ex. 45, Woodard surrebuttal, p. 11.
[349] Ex. 44, Woodard rebuttal, p. 6.
[350] The exact amount of the short-term debt refunded is not specifically known. However Spire Missouri's change in short-term debt between the end of April and May 2021 was a decrease of $199.2 million based on the information in Ex. 45, Woodard surrebuttal, Schedule AWW SR-2, p.5.
[351] Ex. 44, Woodard rebuttal, p. 9, lns. 6-10.
[352] $170 million fifteen days before the end of the true-up period in 2017. Ex. 217, Murray surrebuttal, p. 15, lns. 10-17.
[353] Ex. 124, Won rebuttal, p. 41, lns. 17-20.
[354] Ex. 241, Murray true-up direct, p. 7, lns. 24-27.

283. Spire Inc.'s recently released June 30, 2021, SEC Form 10-Q, Note 5 to the Financial Statements indicates that Spire Missouri's weighted average cost of commercial paper for the nine months ended June 30, 2021, was 0.2%. The same note indicates that Spire Missouri's weighted-average interest rate on a $250 million term loan is 0.8%.[355]

284. Spire Missouri's capital structure consisted of 13.05% and 11.86% short-term debt, on average, for the last 3 years and the last 5 years, respectively.[356]

285. Spire Missouri's quarterly-average capital structure for the test year consisted of at least 10% short-term debt. Even after excluding construction-work-in-progress from the short-term debt balances, over 7% of Spire Missouri's capital structure was supported by short-term debt.[357]

286. Spire Missouri argues that short-term debt should not be part of the capital structure since short-term assets exceeded short-term debt during the 20-month period ending May 31, 2021, after reducing the short-term debt for the entire 20-month period for the pro forma $250 million short-term loan.[358]

287. Spire Missouri entered into a $250 million 364-day loan to partially finance higher gas costs associated with Winter Storm Uri.[359]

288. OPC argues that Spire Missouri's pro forma analysis erroneously adjusts for the $250 million in time frames prior to Spire Missouri's incurrence of the $250 million debt.[360]

[355] Ex. 242, Murray true-up rebuttal, p. 5, lns. 7-12.
[356] Ex. 217, Murray surrebuttal, p. 13, lns. 14-15 and Schedule DM-D-9-1.
[357] Ex. 217, Murray surrebuttal, p. 14, lns. 2-7.
[358] Ex. 45, Woodard surrebuttal, p. 17, lns. 4-9; Ex. 34, Selinger direct, pp. 8-9.
[359] Ex. 62, Woodard true-up rebuttal, p. 5, lns. 6-7.
[360] Tr. Vol. 14, pp. 839-840.

289. OPC's analysis shows that Spire Missouri's short-debt consistently exceeded its short-term assets during the 20-month period ending May 31, 2021.[361]

290. Spire Missouri's use of a hypothetical long-term debt issuance to replace short-term debt is manipulation of the short-term debt balances by assuming the long-term debt issued in May 2021 was issued twenty months prior, in September 2019.[362]

291. Spire Missouri's short-term debt supports its plant investments.[363]

292. OPC proposes a ratemaking capital structure for Spire Missouri of 49.66% equity, 41.83% long-term debt and 8.51% short-term debt.[364] This proposed ratemaking capital structure was calculated based on Spire Missouri's equity and long-term debt amounts as of May 31, 2021. The short-term debt was determined from Spire Missouri's 13-month average short-term debt in excess of short-term assets during the true-up period, which was $272.5 million.[365]

293. The 13-month average short-term debt of $272.5 million used by OPC, and based on Spire Missouri's calculation, includes both the "deferred gas costs – OFO cover charge & penalties" costs of approximately $195.8 million associated with Winter Storm Uri and the $250 million in short-term debt to cover the Winter Storm Uri costs.[366]

294. The $195.8 million in deferred gas costs are recorded as short-term assets for the months of March, April and May 2021.[367]

[361] Tr. Vol. 14, pp. 825-826; Ex. 215, Murray direct, p. 39, lns. 8-11, and p. 54, lns. 1-3; Ex. 216, Murray rebuttal, p. 15, lns 1-7.
[362] Ex. 242, Murray true-up rebuttal, p. 2, lns. 9-18.
[363] Ex. 216, Murray rebuttal, p. 15, lns. 8-9.
[364] Ex. 242, Murray true-up rebuttal, p.4 lns. 26-27; and see Schedule DM-TR-1.
[365] Ex. 242, Murray true-up rebuttal, Schedule DM-TR-2.
[366] Ex. 242, Murray true-up rebuttal, Schedule DM-TR-2.
[367] Ex. 45, Woodard surrebuttal, Schedule AWW SR-2.

295. The 13-month average short-term debt through December 31, 2020 is $255.03 million and does not include Winter Storm Uri related costs or debt.[368]

Long-Term Debt

296. All parties recommend the Commission find the cost of long-term debt to be 3.99%.[369]

Return on Equity (ROE)

297. 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.[370]

298. An authorized Return on Equity (ROE) is a Commission-determined return granted to monopoly industries, allowing them the opportunity to earn just and reasonable compensation for their investments.[371]

299. Three financial analysts offered recommendations regarding an appropriate ROE. Dylan W. D'Ascendis testified on the behalf of Spire Missouri. He is employed by ScottMadden, Inc. as a Director. He has offered expert testimony on behalf of investor-owned utilities in over 20 state regulatory commissions in the United States and FERC on issues including, but not limited to, common equity cost rate, rate of return, valuation, capital structure, class cost of service, and rate design. On behalf of the American Gas Association (AGA), he calculates the AGA Gas Index, which serves as the benchmark against which the performance of the American Gas Index Fund (AGIF) is measured on

[368] Ex. 242, Murray true-up rebuttal, p.5, lns. 20-24 and Schedule DM-TR-2.
[369] Ex. 241, Murray true-up direct, p. 7, lns. 24-27; Ex. 145, Lyons true-up direct; Ex. 59, Antrainer true-up direct, Schedule F, MA-TD1 and MA-TD2.
[370] Ex. 101, Staff Cost of Service Report, p. 7, lns. 9-10.
[371] Ex. 101, Staff Cost of Service Report, p. 7, lns. 10-12.

a monthly basis. He is a member of SURFA and was awarded the professional designation "Certified Rate of Return Analyst" by SURFA. He is also a member of the National Association of Certified Valuation Analysts (NACVA) and was awarded the professional designation “Certified Valuation Analyst” by the NACVA in 2015. He has a Bachelor of Arts degree in Economic History from the University of Pennsylvania and a Master of Business Administration from Rutgers University.[372] D’Ascendis recommends a ROE of 9.95% with a range of 9.94% to 12.07%.[373]

300. Seoung Joun Won, PhD, is currently employed as a Regulatory Compliance Manager in the Financial Analysis Department of the Financial and Business Analysis Division of the Missouri Public Service Commission. He has a Bachelor of Arts, Master of Arts, and Doctor of Philosophy in Mathematics from Yonsei University, along with a Bachelor of Business Administration in Financial Accounting from Seoul Digital University in Seoul, South Korea, and a Doctor of Philosophy in Economics from the University of Missouri - Columbia. He has several certificate examinations for Finance Specialist in South Korea such as Accounting Management, Financial Risk Manager, Enterprise Resource Planning Accounting Consultant, Derivatives Investment Advisor, Securities Investment Advisor, and Financial Planner. Prior to joining the Commission, he taught undergraduate and graduate level mathematics at the Korean Air Force Academy and Yonsei University for 13 years. He served as the director of the Education and Technology Research Center in NeoEdu for 5 years. Before starting his current position at the Missouri Public Service Commission in 2010, he served as a regulatory economist in

[372] Ex. 5, D’Ascendis direct, pp. 4-5.
[373] Ex. 5, D’Ascendis direct, p. 5, lns. 22-24.

Tariff/Rate Design Department.[374] Won recommends a ROE of 9.37 % with a range of 9.12 % to 9.62 %.[375]

301. David Murray is employed as a Utility Regulatory Manager for OPC. Prior to employment with 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.[376] Murray recommends a ROE of 9.25 % with a range of 8.50 % to 9.50 %.[377]

302. Spire Missouri used three models to estimate their COE. These models were the Discounted Cash Flow (DCF) model, the Capital Asset Pricing Model (CAPM), and the Risk Premium Model (RPM).[378]

303. Both OPC and Staff used the DCF model and the CAPM.[379]

304. The DCF model can discount various proxies of cash flows, such as estimated dividends, free cash flows to the equity investor or free cash flows to the firm.[380]

[374] Ex. 101, Staff Cost of Service Report, Appendix 1, p. 59.
[375] Ex. 101, Staff Cost of Service Report, p. 5, ln. 10.
[376] Ex. 215, Murray direct, Schedule DM-D-1.
[377] Ex. 215, Murray direct, p. 38, ln. 20.
[378] Ex. 5, D'Ascendis direct, p. 6, lns. 14-17,
[379] Ex. 101, Staff Cost of Service Report, p. 5, lns. 1-4; Ex. 215, Murray direct, pp. 6-7.
[380] Ex. 215, Murray direct, See Definitions/Abbreviations.

The premise of the DCF model is that an investment of common stock is worth the present values of the infinite streams of dividends discounted at a market rate commensurate with the investment's risk.[381]

305. The CAPM is based on capital market theory in which it is recognized that although the total risk of a company and/or industry consists of market ("systematic") risk and asset/business-specific ("unsystematic") risk, investors are only compensated for systematic risk because holding a diversified portfolio allows for the investor to avoid unsystematic risk. Systematic risks are unanticipated events in the economy, 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/portfolio 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 cost of equity.[382]

306. The RPM is an ROE calculation method that is based on the idea that since investors in stocks take greater risk than investors in bonds, the former can expect to earn a return on a stock investment that reflects a premium over and above the return they expect to earn on a bond investment.[383]

307. Staff and OPC generally argue that Spire Missouri used high inputs in each of the three models Spire Missouri used resulting in higher results.[384]

[381] Ex. 101, Staff Cost of Service Report, p.15, lns. 2-4.
[382] Ex. 215, Murray direct, p. 34, lns. 3-12.
[383] Ex. 124, Won rebuttal, pp. 14-15.
[384] Ex. 216, Murray rebuttal, p. 34, lns 22-24; Ex. 124, Won rebuttal, p.37, ln.12.

308. Staff argued that Spire Missouri's requested ROE of 9.95% was generally criticized as being too high when compared to the average ROE of 9.44% in fully litigated cases in 2020 (when Spire Missouri filed its application).[385]

309. Mr. D'Ascendis inadequately applied COE estimation methods to his gas company proxy group. When he applied the single-stage constant growth form of the DCF model, the CAPM, and the RPM to his utility proxy group, Mr. D'Ascendis used unreasonable upward-biased input data for each estimation model.[386]

310. Mr. D'Ascendis unconventionally utilized non-price regulated proxy group data to his DCF, RPM and CAPM analysis resulting in overstated COE estimation of 11.87%. Using a non-price regulated proxy group is fundamentally against the consensus of the regulated utility COE estimation methodologies.[387]

311. Staff's analysis also found that Mr. D'Ascendis made some unsuitable company-specific adjustments, which introduced more upward bias for his COE estimation.[388]

312. Staff argues that Spire Missouri used an average short-term analysts' growth rate of 6.16% in its DCF model, which significantly exceeds the realistic projected long-term Gross Domestic Product (GDP) growth rate of 3.8%.[389]

313. The single-stage DCF used in Spire Missouri's calculation purportedly describes the growth of the security into perpetuity. Staff argued that no security can grow

[385] Ex. 124, Won rebuttal, p. 6, ll. 2-8.
[386] Ex. 124, Won rebuttal, p. 2, lns. 17-22.
[387] Ex. 124, Won rebuttal, p. 2-3.
[388] Ex. 124, Won rebuttal, p. 3, lns 3-6.
[389] Ex. 124, Won rebuttal, p. 12, lns. 4-5.

at a rate in excess of the economy as a whole in perpetuity.[390] OPC argued that Spire Missouri assumed that the dividends of a company can grow in perpetuity at a 10.44% compound annual growth rate on an annual basis, which would not be rational.[391]

314. Both OPC and Staff argued that Spire Missouri's CAPM calculation used an inappropriately high market risk premium (MRP) of 10.45%, compared to the financial services industry's standard estimate of 4% to 7%.[392]

315. Staff testified the typical equity risk premium (ERP) is in the 3 to 5% range, with most research results indicating no higher than 7%. Staff notes that as calculated for Spire Missouri's proxy group, three of the eight companies have ERPs greater than 9%.[393] Additionally, it was noted that the ERPs for the proxy group are unstable and vary widely, even though natural gas utilities have relatively similar risk.[394]

316. Staff notes that D'Ascendis' predictive risk premium model analysis used a high projected risk free rate, which made Spire Missouri's COE increase by 49 basis points. D'Ascendis used 2.11% consensus forecast 30-year Treasury yield from Blue Chip Financial Services compared to 1.62% actual average yield for the three-month period ending December 31, 2020, on 30-year U.S. Treasury bonds.[395]

317. Staff supports OPC's recommendation of 9.25% as it is within Staff's reasonable range values of 9.12% and 9.62%.[396]

[390] Ex. 124, Won rebuttal, p. 11, l. 15 - p. 12, l. 5.
[391] Ex. 216, Murray rebuttal, p. 19, l. 3; Tr. Vol 14, p. 806-807.
[392] Tr. vol. 14, p. 810, ll. 11-24; and see Ex. 216, Murray rebuttal, p. 23-24; and see Ex. 124, Won rebuttal, p. 26, lns. 7-8.
[393] Ex. 124, Won rebuttal, p. 16, lns. 1-4.
[394] Ex. 124, Won rebuttal, p. 16, lns. 4-6.
[395] Ex. 124, Won rebuttal, p. 16, lns. 8-14.
[396] Ex. 124, Won rebuttal, p. 3, lns. 12-17.

318. Spire Missouri proposed a size adjustment in its proposed ROE. While Spire Missouri is smaller than the average of the Company's proposed regulated proxy group, this is offset by Spire Missouri's higher bond rating compared to the average of the same group.[397]

319. The bond rating agency has already considered overall risks when awarding the higher rating.[398]

320. OPC estimates that Spire Missouri's current COE is in the range of 6.5% to 7.5%.[399] Staff estimates that Spire Missouri's current COE is in the range of 6.40% to 8.10%.[400]

321. D'Ascendis has attributed Spire Inc.'s flotation costs to Spire Missouri. Staff argues that Spire Inc.'s flotation costs should not be borne by Spire Missouri as Spire Missouri is financially independent of Spire Inc., having its own capital structure. Staff further argues that since Spire Missouri does not pay any of Spire Inc.'s debt costs, it should not pay any of its equity costs.[401]

322. The average ROE for natural gas utilities for all cases in the first half of 2021 is reported at 9.62%.[402]

323. The average level of ROE in the second quarter of 2021 is trending down.[403]

[397] Ex. 124, Won rebuttal, p. 36, lns. 10-13.
[398] Ex. 124, Won rebuttal, p. 36, lns. 14-16; Tr. Vol. 14, p. 812, lns. 22-24.
[399] Ex. 215, Murray direct, p. 5, ln. 7.
[400] Ex. 101, Staff Cost of Service Report, p. 5, lns. 15-16.
[401] Ex. 124, Won rebuttal, pp. 36-37; Tr. Vol. 14, p. 811, lns. 18-19.
[402] Ex. 51, S&P Global Market Intelligence, Major Rate Case Decisions: January-June 2021, p. 1.
[403] Tr. Vol. 14, pp. 799-800.

324. The Commission has historically recognized a zone of reasonableness using the national average of recent ROE awards (plus or minus 100 basis points[404]) as a check on the Commission's ROE.[405]

325. An ROE of 9.37% is within 100 basis points of 9.62%, and thus within the zone of reasonableness.

Conclusions of Law regarding Cost of Capital - Issue 1

YY. In determining the rate of return, the Commission must consider Spire Missouri'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.[406] 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.[407]

ZZ. Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.[408] "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

[404] One basis point equals one-hundredth of a percent; thus, 100 basis points equals 1 percent.
[405] *Report & Order* in *Re: Kansas City Power & Light Company*, File No. ER-2010-0355 (April 12, 2011), pp. 120-24; See also *State ex rel. Public Counsel v. PSC*, 274 S.W.3d 569, 574 (Mo. App. W.D. 2009); and *State ex rel. Office of the Public Counsel v. PSC*, 367 S.W.3d 91, 110-11 (Mo. App. S.D. 2012).
[406] See Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, Inc., p. 394 (1993).
[407] *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 574 (Mo. Ct. App. 2009).
[408] *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).

reasonableness', the result of which is that they have some latitude in exercising this most difficult function."[409]

AAA. The United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.[410]

Decision regarding Cost of Capital - Issue 1

The Commission finds that the appropriate capital structure to use for ratemaking purposes is that of Spire Missouri, modified to address the inclusion of short-term debt. The Commission finds that Spire Missouri's short-term debt is being used to finance long-term assets. Therefore, it is appropriate to include short-term debt in the capital structure of Spire Missouri used for ratemaking. However, the average short-term debt amount presented by OPC, which is the 13-month average short-term debt in excess of short-term assets, included both short-term assets and short-term debt associated with Winter Storm Uri. The Commission finds that it is not appropriate to include short-term assets and short-term debt associated with Winter Storm Uri in the capital structure. The Spire Missouri capital structure should be determined based on the equity and long-term debt as of May 31, 2021, and the average short-term debt in excess of short-term assets over the 13-month period ending May 31, 2021, excluding both short-term assets and short-term debt related to Winter Storm Uri during the months of March, April and May, 2021.

The Commission finds that the cost of the short-term debt is 0.29%.

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[409] *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*.

[410] *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' ").

Spire Missouri converted several hundreds of millions of dollars of short-term debt to long-term debt on May 20, 2021, which is eleven days before the close of the true-up period on May 31, 2021. This is the second instance of a large conversion of short-term debt close to the deadline of its rate case by Spire Missouri, and as such, the Commission finds that Spire Missouri is using short-term debt to finance long-term assets. Further, Spire Missouri's capital structure consisted of 13.05% and 11.86% short-term debt, on average, for the last 3 years and last 5 years, respectively. Therefore, the appropriate amount of short-term debt should be included in Spire Missouri's ratemaking capital structure.

The Commission finds that the cost of long-term debt is uncontested, and shall be set at the agreed 3.99%.

The Commission finds the appropriate ROE is 9.37%, the midpoint of Staff's recommended range. 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.

The Commission finds not credible the testimony of Spire Missouri on the issue of ROE. Spire Missouri performed three calculations for ROE. Its DCF model used an average short-term analysts' growth rate of 6.16%, which significantly exceeds the realistic projected long-term GDP growth rate of 3.8%. In its RPM analysis, Spire Missouri uses a proxy group where three of eight companies have ERPs above 9%, when a typical ERP is in the 3% to 5% range, with most research results indicating no higher than 7%. Spire Missouri's CAPM calculation contains an inappropriately high market-risk premium of 10.45%, compared to the financial services industry's standard estimate of 4% to 7%.

Spire Missouri's ROE calculations are not credible as the Commission finds Spire Missouri used high inputs in each of the three models and thus, got high results.

OPC and Staff have supported each other's ROE calculations, but the Commission finds that Staff's recommendation is more persuasive.

Decision Summary

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

Except as otherwise set out in the body of this order, the Commission finds that Spire Missouri met its burden of proof to show that an increased rate is just and reasonable. Thus, the Commission concludes, based upon its review of the whole record that 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 Spire Missouri's utility plant in proper repair for effective public service and provide to Spire Missouri'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.[411] To prevent unnecessary delay in the

[411] Section 386.490.2, RSMo.

filing of compliance tariffs, the Commission will make this order effective on November 22, 2021.

THE COMMISSION ORDERS THAT:

1. The tariff sheets submitted on December 11, 2020, by Spire Missouri, assigned Tariff No. YG-2021-0133 are rejected.

2. Spire Missouri is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order.

3. Spire Missouri shall file a draft CAM, as referenced in the body of this order, and submit such draft as a pleading in File No. GW-2018-0367 no later than six months from the effective date of this order.

4. Spire Missouri shall comply with all directives, conditions and other requirements as more fully described in the body of this order.

5. As described more fully in the body of this Order, Staff shall develop a list of deliverables needed from Spire Missouri, and shall audit Spire Missouri's source documents to where Staff can determine that Spire Missouri is in compliance with the USOA Plant Instructions capitalized overhead requirements.

6. The Commission orders an investigatory docket be opened for Staff to report on Spire Missouri's CAM compliance.

7. Spire Missouri shall provide periodic updates to the Commission regarding its employee transfer project, which shall include, at a minimum, a status report filed every 60 days, beginning January 17, 2022.

8. As described more fully in the body of this Order, Staff, Spire Missouri, and OPC shall provide 60-day status reports of the progress in Staff's completion of its audit

and determination that Spire Missouri is in compliance with the USOA Plant Instruction overhead cost requirements. The first of the status reports shall be submitted on or before January 17, 2022.

9. This Report and Order shall become effective on November 22, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

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 and around the City of Hallsville, Missouri	)))))))	**File No. SA-2021-0017**

REPORT AND ORDER

CERTIFICATES

§1. Generally

The Commission granted Missouri-American Water Company's certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Hallsville, Missouri.

§6. Jurisdiction and powers of the State Commission

The Commission found that the matters to be considered by it and the Clean Water Commission were segregated by Clean Water Commission rules requiring PSC-regulated entities to first seek a certificate of convenience and necessity (CCN) before applying for a permit. The Commission also found that the Commission has the sole authority to grant a CCN. Therefore, the Commission concluded that the Boone County Regional Sewer District's superior status as a continuing authority under Clean Water Commission regulations did not preclude the Commission from issuing a CCN to Missouri-American Water Company.

§21.1. Public interest

The Commission found that Missouri-American Water Company's proposal to acquire the City of Hallsville's sewer system promotes the public interest as demonstrated by Hallsville residents voting overwhelmingly to sell the city's sewer assets to MAWC.

§33. Immediate need for the service

The Commission found there was a present and future need for the certificate of convenience and necessity primarily because Missouri-American Water Company's acquisition of the Hallsville System benefited both the City of Hallsville and its customers.

DEPRECIATION

§13. Depreciation rates to be allowed

The Commission took official notice of the Commission's order approving an agreement to resolve MAWC's most recent rate proceeding, File No. WR-2020-0344. All parties

stipulated on the record that the depreciation rates established in File No. WR-2020-0344 constituted the depreciation rates recommended by Staff as a condition of approval of MAWC's application.

SEWER

§8. Jurisdiction and powers of local authorities

The Boone County Regional Sewer District's regulations do not prohibit private ownership and operation of the Hallsville sewer system by Missouri-American Water Company and posed no legal barrier to consideration of Missouri-American Water Company's application.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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 and around the City of Hallsville, Missouri	)))))))	**File No. SA-2021-0017**

REPORT AND ORDER

Issue Date: November 17, 2021

Effective Date: December 17, 2021

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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APPEARANCES

For Missouri-American Water Company:

Dean L. Cooper and Jennifer L. Hernandez, Brydon, Swearengen & England, P.C., 312 E. Capitol Ave., Jefferson City, Missouri 65102.

Timothy W. Luft, Missouri-American Water Company, 727 Craig Road, St. Louis, Missouri 63141.

For the Staff of the Missouri Public Service Commission:

Travis J. Pringle, 200 Madison Street, Suite 800, Jefferson City, Missouri 65102.

For the Office of the Public Counsel:

Nathan Williams, P.O. Box 2230, Jefferson City, Missouri 65102.

For Boone County Regional Sewer District:

Jennifer S. Griffin, Lathrop GPM LLP, 314 E. High Street, Jefferson City, Missouri 65101.

Regulatory Law Judge: **John T. Clark**

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REPORT AND ORDER

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

PROCEDURAL HISTORY

On July 20, 2020, Missouri-American Water Company (MAWC) applied for a certificate of convenience and necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Hallsville, Missouri. MAWC requested Commission approval to acquire the City of Hallsville sewer system. In addition, MAWC requested waiver of the 60-day notice requirement under Commission Rule 20 CSR 4240-4.017.[1]

The Commission issued notice of the application, and the Boone County Regional Sewer District (District) filed a timely request to intervene. On September 16, 2020, the Commission granted the District's intervention request over MAWC's objection. The Staff of the Commission (Staff) and the Office of the Public Counsel (OPC) are also parties to this proceeding.[2]

At the direction of the Commission, Staff filed its recommendation on November 18, 2020.Staff recommended the Commission grant MAWC's application with

[1] All citations to the Code of State Regulations are to the regulations currently in effect, unless otherwise noted.
[2] Section 386.710.1(2), RSMo (2016); Commission Rule 20 CSR 4240-2.010. All citations to Missouri statute are to the Revised Statutes of Missouri (2016), unless otherwise noted.

conditions. The District objected to Staff's recommendation and requested an evidentiary hearing.[3] MAWC filed a response to Staff's recommendation, indicating it accepted the conditions proposed by Staff for issuance of a CCN in this case.[4]

On January 20, 2021, the Commission issued a procedural schedule based on a schedule proposed by the parties and set an evidentiary hearing for April 8, 2021. The parties filed direct, rebuttal and surrebuttal testimony. The Commission held an evidentiary hearing on April 8, 2021, by telephone and video conference. During the hearing, the Commission heard testimony from MAWC witnesses that Hallsville was expected to approve a new flat rate structure on April 12, 2021, and that MAWC proposed to adopt the Hallsville rates in place at closing on the system.

Also during the hearing, the Commission took official notice of the Commission's order approving an agreement to resolve MAWC's most recent rate proceeding, File No. WR-2020-0344. In addition, the Commission's order and incorporated agreement in that case were included on the record as an exhibit. All parties stipulated on the record that the depreciation rates established in File No. WR-2020-0344 constituted the depreciation rates recommended by Staff as a condition of approval of MAWC's application.[5]

On April 23, 2021, the Commission directed MAWC to file documentation to confirm the status of and describe any new rate structure in place for the system. The Commission also directed Staff to file a supplemental recommendation to address whether a new rate structure results in any changes to Staff's recommendation.

[3] *District's Response to the Staff Recommendation and Request for Evidentiary Hearing* (Dec. 4, 2020). Documents filed in this case, File No. SA-2021-0017, are cited in this order by document title and filing date on first reference, with abbreviated citations on subsequent reference. A file number is specified only for documents filed in other Commission cases.
[4] Missouri-American's Response to Staff's Recommendation (Dec. 4, 2020).
[5] Transcript Vol. 2, p. 196-199.

On April 28, 2021, MAWC filed a response, advising the Commission of a new Hallsville rate ordinance and providing a copy of the ordinance, effective on April 12, 2021. On May 10, 2021, Staff filed a *Supplemental Recommendation* and attached additional documents. When no objections were received in the period provided, the Commission admitted as exhibits the ordinance and Staff's supplemental recommendation and attachments on May 27, 2021.

The parties filed initial briefs on June 9, 2021, and reply briefs on June 16, 2021. On June 25, 2021, the Commission granted the District's motion for leave to file a response to reply briefs filed by Staff and MAWC and accepted a response brief filed by the District on June 24, 2021. As provided by the Commission's June 25 order, Staff and MAWC filed supplemental response briefs on July 2, 2021, and the case was deemed submitted for the Commission's decision on that date.[6]

ISSUES

The parties proposed two issues for the Commission's determination: 1) Is MAWC's provision of wastewater service, associated with the purchase of the City of Hallsville wastewater system, "necessary or convenient" for the public service under Section 393.170?; and 2) What conditions should be imposed on a CCN issued to MAWC for the Hallsville System? Prior to evaluating those issues, the Commission will address its authority to grant a CCN in this matter.

[6] "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).

A. Is the Commission prohibited from granting a certification of convenience and necessity to MAWC for the Hallsville System as a matter of law?

1. Must the Commission deny MAWC's application for a certificate of convenience and necessity because the District holds superior status as a continuing authority under Clean Water Commission regulations?

Findings of Fact[7]

1. MAWC is a Missouri corporation and a "sewer corporation" and "public utility" as defined by Section 386.020, RSMo (Cum. Supp. 2020), and is authorized to provide water and sewer service to portions of Missouri.[8]

2. MAWC provides water service to the public in and around the cities of St. Joseph, Joplin, Brunswick, Mexico, Warrensburg, Parkville, Riverside, Jefferson City, and most of St. Louis County, as well as parts of Cole, St. Charles, Warren, Jefferson, Morgan, Pettis, Benton, Barry, Stone, Greene, Taney, Christian, Clay, Ray and Platte counties in Missouri.[9]

3. MAWC provides sewer service to the public in Callaway, Jefferson, Pettis, Cole, Morgan, Platte, Taney, Stone, Christian, St. Louis, Clinton, Clay, Ray and Warren counties in Missouri.[10]

4. MAWC provides water service to about 470,000 customers and sewer service to about 15,000 customers in Missouri.[11]

5. MAWC is a subsidiary of American Water Works Company.[12]

6. The Missouri Department of Natural Resources (DNR) has authority to

[7] Issues are divided for purposes of organization and clarity. Findings of fact are cumulative; each set of findings incorporates findings stated for any previous issues.
[8] Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 2; *Application and Motion for Waiver*, ¶¶ 2-3 (July 20, 2020).
[9] Ex. 1, Horan Direct, p. 7.
[10] Ex. 1, Horan Direct, p. 7.
[11] Ex. 1, Horan Direct, p. 7.
[12] Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 7.

issue permits for sewer systems under the Missouri Clean Water Law.[13]

7. MAWC qualifies as a Level 3 Continuing Authority under Missouri Clean Water Commission (Clean Water Commission) regulations.[14]

8. The District is a common sewer district organized under Chapter 204, RSMo.[15]

9. The District was organized with the approval of Boone County voters and has been in existence since 1973.[16] The District is governed by a board of trustees appointed by the Boone County Commission.[17]

10. The District provides wastewater collection and/or treatment services to about 7,148 customers in incorporated and unincorporated areas of Boone County.[18]

11. In January 2010, the Clean Water Commission approved the District as a Level 2 Continuing Authority.[19]

12. The Clean Water Commission approved the District as a Level 2 Continuing Authority in unincorporated Boone County, excluding municipalities.[20]

13. The District's level 2 Continuing Authority has superior status to a Level 3 Continuing Authority in the DNR permit process, as provided by Clean Water Commission regulation.[21]

14. The City of Hallsville is a fourth-class city located in Boone County[22] and

[13] Section 644.026, RSMo 2016; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 7-9; Ex. 200, Ratermann Rebuttal, p. 7-8.
[14] Ex. 100, Corrected Busch Direct, p. 2; Schedule JAB-d2, p. 8.
[15] Ex. 200, Ratermann Rebuttal, p. 5.
[16] Ex. 200, Ratermann Rebuttal, p. 5; Ex. 3, Corrected Horan Surrebuttal, p. 10, Schedule MH-9, p. 1-2.
[17] Ex. 200, Ratermann Rebuttal, p. 5.
[18] Ex. 200, Ratermann Rebuttal, p. 6; Transcript Vol. 2 at p. 256; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 7.
[19] Ex. 200, Ratermann Rebuttal, p. 6; Ex. 3, Corrected Horan Surrebuttal, p. 8-10, Schedule MH-8, p. 18-31.
[20] Ex. 200, Ratermann Rebuttal, p. 6; Ex. 3, Corrected Horan Surrebuttal, p. 9, Schedule MH-6, p. 96; Schedule MH-7, p. 2; Schedule MH-8, p. 29, 31; Transcript Vol. 2, p. 218-222; Ex. 6; Ex. 5.
[21] Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 8-9.
[22] Ex. 1, Horan Direct, p. 4.

owns and operates a sewer system (Hallsville System) that provides service to about 664 customer accounts.[23] While the majority of the Hallsville System's collection facilities are located within incorporated Hallsville, the Hallsville System's wastewater "treatment" facilities are located in unincorporated Boone County.[24]

15. The Hallsville System assets were put in service in the early 1970s. The treatment system is mainly gravity fed, with the exception of pumps located in the plant's two pump houses. The system includes PVC and clay pipes of various sizes. Newer Hallsville subdivisions utilize only PVC pipes. The system contains 10,020 linear feet of force main and 63,847.13 linear feet of gravity sewer. There are a total of five lift stations with 7.5 horse power duplex pumps.[25]

16. All homes and businesses connected to this system are currently metered for water, which is supplied by the City of Hallsville.[26]

17. Growth within the City of Hallsville has been rising steadily.[27]

18. The City of Hallsville is governed by a board of aldermen, consisting of four aldermen and a mayor.[28]

19. In July 2019, MAWC submitted a proposal to purchase the Hallsville System.[29]

20. On August 26, 2019, the Hallsville Board of Aldermen enacted Ordinance No. 370, calling for a November 5, 2019 election to propose the sale of Hallsville's sewer system to MAWC.[30]

[23] Ex. 1, Horan Direct, p. 4; Ex. 100, Corrected Busch Direct, p. 2; Schedule JAB-d2, p. 7.
[24] Transcript Vol. 2 at p. 141; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 8, 9.
[25] Ex. 100, Busch Corrected Direct, Schedule JAB-d2, p. 9.
[26] Ex. 100, Busch Corrected Direct, Schedule JAB-d2, p. 9.
[27] Ex. 100, Busch Corrected Direct, Schedule JAB-d2, p. 9.
[28] Transcript Vol. 2, p. 108.
[29] Transcript Vol. 2, p. 98-100, 116-117, 121; Ex. 305, Proposal Offer.
[30] Ex. 1, Horan Direct, p. 4, Schedule MH-1; Ex. 2: Carter Direct p. 4.

21. In September 2019, the City of Hallsville sought proposals for the purchase of the Hallsville System, requesting submissions no later than November 1, 2019.[31] Hallsville sought proposals from other buyers after scheduling a ballot issue on the sale to MAWC on the advice of the city's legal counsel.[32]

22. On October 3, 2019, the City of Hallsville conducted a public meeting in regard to the proposed sale.[33]

23. MAWC conducted public meetings in Hallsville on October 10 and 29, 2019.[34]

24. Hallsville voters approved sale of the Hallsville System to MAWC in a November 5, 2019 election, with a vote of 136 in favor and 64 opposed.[35]

25. On or before November 1, 2019, in response to the city's request for proposals, Liberty Utilities, MAWC and the District submitted proposals to purchase the Hallsville System.[36] On January 22, 2020, representatives of Liberty Utilities, MAWC and the District presented proposals to purchase the Hallsville System to the Hallsville Board of Aldermen.[37]

26. In July 2020, MAWC and the City of Hallsville entered a purchase agreement to allow MAWC to acquire the Hallsville System.[38]

27. According to the District, over seven months after the voters of Hallsville authorized the sale to MAWC and the month after the City of Hallsville formally executed a purchase agreement with MAWC, the District prepared a new "draft facility plan," dated

[31] Ex. 202, Stith Rebuttal, p. 6, Schedule DES-2; Ex. 2, Carter Direct, p. 4.
[32] Transcript Vol. 2 at p. 117.
[33] Ex. 2, Carter Direct, p. 4-5.
[34] Ex. 1, Horan Direct, p. 5; Ex. 2, Carter Direct, p. 5.
[35] Ex. 2, Carter Direct, p. 4-5; Ex. 8, Election Certification; Ex. 1, Horan Direct, p. 4-5.
[36] Ex. 2, Carter Direct, p. 4; Transcript Vol. 2 at p. 212.
[37] Ex. 2, Carter Direct, p. 4; Transcript Vol. 2 at p. 120.
[38] Ex. 2, Carter Direct, p. 5; Transcript Vol. 2 at p. 122-123; Ex.1, Horan Direct, p. 5, Schedule MH-2.

August 10, 2020, that proposes to close three District wastewater treatment facilities, construct pump stations at those locations, and build force main to transport wastewater to the District's Rocky Fork Wastewater Treatment Facility.[39]

28. According to the District, four months later it prepared a new "facility plan," dated December 10, 2020, that included a plan to transport wastewater from facilities not owned or operated by the District, including the City of Hallsville.[40]

29. According to the District, it submitted the December 10, 2020 facility plan to DNR, and the District's general manager corresponded by email with a DNR engineer about the plan. [41]

30. The Districts witness, Mr. Ratermann, testified that the December 10, 2020 facilities plan is not an area-wide management plan, but would be part of the District's over-all area-wide management plan. He further testified that no area-wide plan had been submitted as evidence in this case.[42]

31. No copy of any correspondence between the District and DNR was submitted as evidence in the case. No documents showing DNR receipt of or action related to the December 10, 2020 facility plan were submitted as evidence in the case. No documents were submitted showing that an area-wide plan incorporating the new December 10, 2020 facilities plan was provided to DNR were submitted as evidence in this case.

[39] Transcript Vol. 2, p. 239-241; Ex. 307, Draft Facility Plan.
[40] Transcript Vol. 2, p. 239-241; Ex. 200, Ratermann Rebuttal, p. 11-12, Schedule TR-1
[41] Transcript Vol. 2 p. 200, 241-242.
[42] Transcript Vol. 2, p. 256-257

32. The Hallsville System is permitted by DNR[43] as a "no discharge" system, which means that permit does not authorize the discharge of wastewater directly into the waters of the state.[44]

Conclusions of Law[45]

A. Section 386.020(49), RSMo (Cum. Supp. 2020) defines "sewer corporation" as including:

> every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]

B. Section 386.020(43), RSMo (Cum. Supp. 2020) defines "public utility" as including:

> every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heating company or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]

C. MAWC is a "sewer corporation" and "public utility" subject to regulation by the Commission pursuant to its authority under Chapters 386 and 393, RSMo.[46]

D. Section 393.170, RSMo (Cum. Supp. 2020), requires a certificate of convenience or necessity granted by the Commission before MAWC may provide sewer service in the proposed Hallsville service area.

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[43] Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 7; Ex. 202, Stith Rebuttal, p. 5-6, Schedule DES-3, p. 1-20.
[44] Transcript Vol. 2 at p. 186-187.
[45] Issues are divided for purposes of organization and clarity only. Conclusions of law are cumulative; each set of conclusions incorporates conclusions stated for any previous issues, as necessary. Some issues may not require additional conclusions of law.
[46] *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n*, 858 S.W.2d 806, 808 (Mo. App. W.D. 1993)(Section 393.140 establishes the Commission's general powers); *see also* Section 386.250.

E. Since MAWC brought the application, it bears the burden of proof.[47] The burden of proof is the preponderance of the evidence standard.[48] In order to meet this standard, MAWC must convince the Commission it is "more likely than not" that its assertions are true.[49]

F. The Clean Water Commission, part of DNR, is composed of members appointed by the Governor with the advice and consent of the Senate.[50]

G. DNR is authorized to issue or deny permits for the construction and operation of treatment facilities and sewer systems.[51]

H. DNR permitting is governed by Chapter 6 of the Clean Water Commission's rules. Clean Water Commission rules require the designation of a "continuing authority" in any application to DNR for an operating or construction permit pursuant to the Missouri Clean Water Law.[52]

I. Clean Water Commission rules define five levels of continuing authority. The highest level, providing greatest authority is Level 1. That level is superior to the other levels, which descend from Level 2 to Level 5.[53]

J. Clean Water Commission rules provide that a Level 3 authority may "constitute a continuing authority" in a permit application "by showing" that a superior

[47] "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).
[48] *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).
[49] *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).
[50] Section 644.021, RSMo.
[51] Section 644.026, RSMo (Clean Water Commission authority to establish permits by rule); Section 644.051.3, RSMo (requiring permits for construction, replacement and modification of any system designed to convey or discharge sewage to waters of the state and construction of earthen wastewater storage).
[52] 10 CSR 20-6.010(1), (2)(A). Chapter 6 of the Clean Water Commission's regulations bear a current publication date of May 31, 2020.
[53] 10 CSR 20-6.010(2)(B).

continuing authority is "not available," does not have "jurisdiction," is "forbidden by state statute or local ordinance from providing service," or when one of seven exceptions exist.[54]

K. Permit applicants that propose "use of a lower preference continuing authority," when a "higher level authority is available," are required to submit additional information with the application to demonstrate the application qualifies for one of seven exceptions to the preference for higher level authorities.[55]

L. Such additional information includes voluntary waiver or refusal of service by superior continuing authorities as well as specified technical and economic circumstances that make service by superior continuing authorities impractical.[56]

M. Such additional information may include a "to-scale map" demonstrating that the "legal boundary" of the property to be connected is "beyond" 2,000 feet "from the collection system operated by the higher preference authority."[57]

N. Such additional information may not "conflict with any area-wide management plan approved under section 208 of the Federal Clean Water Act or by the Missouri Clean Water Commission."[58]

O. Section 208 of the federal Clean Water Act limits federal grants for the construction of publicly owned treatment works to those projects that conform to an area-wide management plan approved by the Environmental Protection Agency.[59]

P. Section 208 of the federal Clean Water Act provides that no permit under the

[54] 10 CSR 20-6.010(2)(B) (citing requirements stated in 10 CSR 20-6.010(2)(C) for additional information required when applicants propose use of a lower preference authority).
[55] 10 CSR 20-6.010(2)(C); Clean Water Commission Rule 10 CSR 20-6.010(2)(B) states: "Continuing authorities are listed in preferential order," with Level 1 authorities possessing the highest rank.
[56] 10 CSR 20-6.010(2)(C)1-7.
[57] 10 CSR 20-6.010(2)(C)3.
[58] 10 CSR 20-6.010(2)(C).
[59] 33 U.S.C. § 1288(d). The federal Clean Water Act establishes requirements for "area-wide waste treatment management plans," and provides that such plans "shall be submitted to the Administrator for his approval." See 33 U.S.C. § 1288(b)(3). The Administrator referenced by the federal Clean Water Act is the administrator of the U.S. Environmental Protection Agency. *See* 33 U.S.C. § 1251(d).

National Pollutant Discharge Elimination System may be issued for any "point source" in conflict with an approved area-wide management plan.[60]

Q. Clean Water Commission rules allow municipalities and public sewer districts to seek designation as Level 2 continuing authorities.[61] The Clean Water Commission rule in effect in 2010, when Clean Water Commission approved the District's request to be recognized as a Level 2 authority, required submission of a "Regional Sewage Service and Treatment Plan" to be "developed by all affected political subdivisions and submitted" to DNR, subject to Clean Water Commission approval.[62]

R. Clean Water Commission rules define a Level 1 authority as "a municipality or public sewer district or governmental entity which has been designated as the area-wide management authority under section 208(c)(1) of the Federal Clean Water Act."[63]

S. Clean Water Commission rules define a Level 2 authority as "a municipality, public sewer district, or governmental entity" that provides "wastewater collection and/or treatment services on a regional or watershed basis as outlined in section (2)(F) of this rule and approved by the Missouri Clean Water Commission."[64]

T. Sewer companies regulated by the Public Service Commission are defined as Level 3 authorities by Clean Water Commission Rule 10 CSR 20-6.010(2)(B)3.

U. Clean Water Commission rules require any entity regulated by the Commission to obtain a certificate of convenience and necessity from the Public Service Commission before applying for a permit from DNR.[65]

[60] 33 U.S.C. § 1288(e) (citing 33 U.S.C. § 1342, entitled the National Pollutant Discharge Elimination System).
[61] 10 CSR 20-6.010(2)(F).
[62] 10 CSR 20-6.010(3)(C).
[63] 10 CSR 20-6.010(2)(B)1.
[64] 10 CSR 20-6.010(2)(B)2.
[65] 10 CSR 20-6.010(2)(B)3.

V. Duly promulgated rules of a state administrative agency have the "force and effect of law."[66]

W. By statute, a fourth-class city may sell a public wastewater system upon passage of an ordinance, notice to customers, conduct of a public meeting at least 30 days before the public vote, and the approval of voters by a majority of votes cast on the issue.[67]

Decision

From the outset of its intervention, the District has characterized its status as a Level 2 continuing authority as a dispositive fact. It has contended that a Commission order granting MAWC a CCN will "usurp the District's authority as a Level 2 Continuing Authority"[68] and that, because of the District's status, MAWC "lacks authority" to "acquire and operate a sewer system in the District's service area."[69] However, that fact is not dispositive.

DNR regulations do not prevent applicants for a permit to propose using a lower preference of continuing authority. A lower level continuing authority, such as MAWC, when applying for a DNR permit where a higher level continuing authority, such as the District, is available must show that the superior continuing authority is "not available," does not have "jurisdiction," is "forbidden by state statute or local ordinance from providing service," or one of seven exceptions. DNR makes the determination as to which continuing authority prevails and will receive a permit. DNR is also the only body able to grant waivers regarding continuing authority.[70]

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[66] *Mo. Coal. For Env't. v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 134 (Mo. banc 1997).
[67] Section 88.770.1, RSMo (Cum. Supp. 2020). This statute was amended effective August 28, 2019. Among other changes the amendment authorizes the municipal sale of a wastewater systems on a simple majority vote.
[68] *District's Reply to MAWC's Response in Opposition to District's Application to Intervene*, ¶ 19 (Sept. 8, 2020).
[69] *District's Amended Response to the Staff Recommendation and Request for Evidentiary Hearing*, (Dec. 8, 2020).
[70] 10 CSR 20-6.010(2)(C).

DNR will decide whether to grant MAWC an operating permit for Hallsville's system, pursuant to state statute and regulation.[71] The Commission does not need to conclude that DNR will grant MAWC a permit for the Hallsville System before issuing MAWC a CCN to operate that system.

The District argues that it has exercised its authority as a Level 2 continuing authority by adopting Sanitary Sewer Use Regulations and a Clean Water Commission approved area-wide management plan. No single document has been identified on the record as an area-wide management plan that includes the City of Hallsville. The only evidence provided regarding Clean Water Commission approval for such a plan is testimony from the District's general manager that he has corresponded by email with a DNR engineer in regard to the December 2020 facility plan. The District's witness was willing to identify the "facility plan" as part of an area-wide management plan only when prompted to do so by District counsel. When asked if an area-wide management plan had been provided to the Commission in this case, Mr. Ratermann testified he did not believe it had.

The Commission is not able to find, based on the evidence on the record and the authorities cited by the parties, that issuance of a CCN to MAWC would necessarily conflict with any area-wide management plan that may ultimately be approved under section 208 of the federal Clean Water Act or by the Clean Water Commission. Instead, that determination will be made by DNR. Without a clear demonstration that any future application by MAWC for a DNR permit for the Hallsville System must fail as a matter of law, this Commission risks reaching beyond its statutory authority to draw conclusions on

[71] Sections 640.710; 644.026, RSMo; 10 CSR 20-6.010.

matters entrusted to another state agency.

The matters to be considered by this Commission and the Clean Water Commission are segregated by Clean Water Commission rules that require PSC-regulated entities, such as MAWC, to first seek a CCN before applying for a permit, and the Commission has the sole authority to grant a CCN. Therefore, the Commission concludes that the Districts superior status as a continuing authority under Clean Water Commission regulations does not preclude the Commission from issuing a CCN to MAWC.

2. Do the District's regulations prevent the Commission from granting MAWC a CCN for the Hallsville System?

Findings of Fact

33. The District has adopted regulations entitled "Sanitary Sewer Use Regulations."[72]

34. The Hallsville System disposes of wastewater through a "land application process" that applies wastewater to farmland.[73] The Hallsville System does not dispose of wastewater by discharge into the District's sewer system or treatment facilities.

35. No evidence was offered that the District has given notice to DNR and Hallsville or MAWC that a private sanitary sewer system "can be connected" to the District's system.

Conclusions of Law

X. Section 204.320, RSMo, authorizes sewer district boards of trustees to "pass all necessary rules and regulations" to conduct district business.

[72] Transcript Vol. 2 at p. 258; Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 178-213.
[73] Ex. 1, Horan Direct, p. 5.

Y. Section 204.330.7, RSMo vests common sewer district boards of trustees with:

> all of the powers necessary and convenient to provide for the operation and maintenance of its treatment facilities and the administration, regulation, and enforcement of its pretreatment program, including the adoption of rules and regulations, to carry out its powers with respect to all municipalities, subdistricts, districts, and industrial users which discharge into the collection system of the district's sewer system or treatment facilities.

Z. The authority created by Section 204.330.7 includes the "promulgation of any rule, regulation or ordinance."

AA. The District's regulations state a "scope and purpose" to "govern the use of public sanitary sewers, the installation and connection of building sanitary sewers, and the discharge of waters and wastes into the public sanitary sewer systems," with the purpose of "protect[ing] and promot[ing] the public health and ... ensur[ing] the safe and efficient delivery of wastewater collection and centralized treatments services within the areas of Boone County, Missouri, subject to the jurisdiction of the Boone County Regional Sewer District."[74]

BB. The District's regulations do not apply to the Hallsville System, which is a "wastewater collection system or treatment facility ... constructed and operated under a [DNR] permit issued to another public or governmental wastewater management and treatment agency having exclusive jurisdiction."[75]

CC. District regulations do not apply when the District "waives the right to act as Continuing Authority for such system or facility."[76]

[74] Boone County Regional Sewer District Sanitary Sewer Use Regulations, § 2.2; *see* Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 188.
[75] Boone County Regional Sewer District Sanitary Sewer Use Regulations, §§ 2.5, 2.5.2; *see* Ex. 200; Ratermann Rebuttal, Schedule TR-1, p. 188.
[76] Boone County Regional Sewer District, Sanitary Sewer Use Regulations, § 2.5.2; *see* Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 188.

DD. District regulations do not expressly address the sale of a municipal sewer system in Boone County.

EE. District regulations define "private sanitary sewer systems" as systems "that are not under the jurisdiction of the District or other governmental entity and which [are] regulated by [DNR] and, when applicable, the Missouri Public Service Commission."[77]

FF. Under its regulations, the District may give notice to DNR and an entity holding a DNR operating permit that a private sanitary sewer system "can be connected" to the District's system.[78] The District's regulations provide "no private sanitary sewer system which is regulated by [DNR] shall be granted a new operating permit or renewal of an existing operating permit," when such notice is made by the District.[79]

Decision

The District contends that its regulations prohibit private ownership and operation of the Hallsville System.[80] Because this argument proposes that approval of a CCN for the Hallsville System is contrary to law, the Commission takes up this issue as a threshold matter.

The Commission finds District regulations pose no legal barrier to consideration of MAWC's application. First, the Commission does not find in the District's regulations a clear prohibition of private ownership and operation of sewer systems in Boone County. In fact, the regulations contemplate circumstances in which private ownership of sewer systems may occur.[81] Nor do the regulations expressly address the sale of municipal

[77] Boone County Regional Sewer District Sanitary Sewer Use Regulations, § 2.6.2.3; *see* Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 190.
[78] Boone County Regional Sewer District Sanitary Sewer Use Regulations, § 2.6.2.3; *see* Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 190.
[79] Boone County Regional Sewer District, Sanitary Sewer Use Regulations, § 2.6.2.3; *see* Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 190.
[80] *District's Post-Hearing Brief*, p. 8-12 (June 9, 2021); *District's Response to Reply Briefs of Staff and MAWC*, p. 1 (June 24, 2021).
[81] Boone County Regional Sewer District Sanitary Sewer Use Regulations, §2.6.2.3 ("If neither the District

systems. The Hallsville System, as it exists today, is not subject to the District's regulations.[82]

Second, to the extent the regulations authorize the District to require a private system to connect to the District's system, the District has not made such a demand. District regulations Section 2.6.2.3 authorizes the District to require private sanitary sewer systems to connect to the District's system under specified circumstances. As provided by the regulation, the District invokes this authority by giving notice to DNR and the operator of a private sewer system of the availability of the District's system and the District's intention to require the system to connect. There is no evidence on the record that the District has given such notice, nor is there any evidence to indicate it has the present right to do so.

The District's theory that its regulations are controlling has drawn arguments from MAWC and Staff that the District's regulations are preempted by Missouri's Clean Water Law. It is not necessary for the Commission to determine whether the District's regulations are preempted when it is clear that the District's regulations do not apply to the facts at this time and may apply only if MAWC applies to DNR for a permit for the Hallsville System and if the District issues notice that it will require the Hallsville System to connect.[83] If the parties' dispute persists, MAWC and the District may require judicial

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under the provisions of these regulations nor any other public or governmental agency having jurisdiction is willing and/or able to provide wastewater collection and treatment services, but wastewater collection and treatment services are nonetheless required in the geographic area to which a Department issued operating permit is applicable and it is demonstrated that a competent, qualified and solvent private person, entity or organization is ready, willing and able to provide such services as Continuing Authority pursuant to Department regulations, then such other person, entity or organization may act as Continuing Authority without objection of the District if approved by the Department.")

[82] Boone County Regional Sewer District Sanitary Sewer Use Regulations, §§ 2.5, 2.5.2; see Ex. 200, Ratermann Rebuttal, Schedule TR-1, p. 188.

[83] The District regulation describing the process for demanding connection of a private sanitary sewer system provides that no "new operating permit or renewal of an existing operating permit" shall be issued if the District gives notice to DNR and the "Continuing Authority to whom such operating permit has been or will be issued."

action to sort out the District's authority under its regulations and Chapters 204 and 250, RSMo, in relation to Missouri's Clean Water Law. Under the facts now in existence, the District's authority under its regulations does not compel a finding that issuing a CCN to MAWC is contrary to law.

B. Is MAWC's provision of wastewater service, associated with the purchase of the City of Hallsville wastewater system, "necessary or convenient" for the public service under Section 393.170?

Findings of Fact

36. Hallsville serves 664 sewer accounts and has contracts to provide treatment to the Sunnyslope and Silver Creek subdivisions.[84]

37. The Hallsville System applies wastewater to irrigate farm land under agreements with area farmers.[85] When wastewater cannot be used for irrigation, wastewater is held in three holding cells or lagoons.[86]

38. The Hallsville System does not own the equipment or land used for application of wastewater.[87]

39. The challenges confronting the Hallsville System include unauthorized discharge of wastewater, inflow and infiltration (where uncontaminated water enters the sewers), and deterioration of infrastructure.[88]

40. DNR has found the Hallsville System to be out of compliance with a variety of requirements in the past five years, including requirements to aerate the system's primary storage cell, submit a complete annual operations report, and lower lagoon and

[84] Ex. 1, Horan Direct, p. 4.
[85] MAWC witness Matt Horan describes the wastewater applied in irrigation as "untreated," Ex. 1, Horan Direct, p. 5; while Staff's corrected memorandum attached to Staff's recommendation describes the wastewater used in irrigation as "partially treated." Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 10.
[86] Ex. 1, Horan Direct, p. 5; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 10.
[87] Ex. 1, Carter Direct, p. 6; Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 10-11.
[88] Ex. 2, Carter Direct, p. 3; Ex. 1, Horan Direct, p. 6-7.

storage basins to specified operating levels.[89]

41. Although discharge is not authorized by the Missouri State Operating Permit, the Hallsville System's main holding lagoon discharged "continuously" for most of the year 2020, in violation of an operating permit issued by DNR.[90] The system was considered to be "under enforcement" by DNR's water protection enforcement section.[91]

42. It would be too costly for Hallsville residents for the municipality to provide funding to fix the Hallsville wastewater system.[92]

43. MAWC anticipates adding "some form of treatment" to the Hallsville System, if it is acquired.[93] MAWC has developed several treatment options with cost estimates for the Hallsville System, but has not decided on what technology to use, and has not completed any designs.[94]

44. MAWC will need to conduct additional engineering and studies to determine the best treatment approach for the Hallsville System. That project will also require engineering approval from DNR and a construction permit before any work can begin.[95]

45. Staff witness Jarrod Robertson credibly testified that without experiencing daily operation and compliance issues in real time, it is not conceivable to devise a plan for upgrades specific enough for drafting of plans and specifications.[96]

46. MAWC has acquired systems similarly situated to Hallsville's system. MAWC invested the necessary capital to improve those systems.[97]

47. MAWC has the financial resources to invest in the Hallsville System. MAWC

[89] Ex. 1, Horan Direct, p. 6-7; Transcript Vol. 2 at p. 112-113.
[90] Ex. 1, Horan Direct, p. 6; Transcript Vol. 2 at p. 112.
[91] Ex. 1, Horan Direct, p. 7.
[92] Ex. 2, Carter Direct, p. 3.
[93] Ex. 1, Horan Direct, p. 5. Transcript Vol. 2, p. 76.
[94] Ex 3: Horan Surrebuttal, p. 7-8. Schedule MH-5C.
[95] Ex 3, Horan Surrebuttal, p. 7.
[96] Ex. 101, Robertson Surrebuttal, p. 10.
[97] Ex 3, Horan Surrebuttal, p. 6.

placed in service improvements worth more than $226 million to keep pace with the replacement needs of its water distribution and sewer collection infrastructure.[98]

48. MAWC has submitted a feasibility study as required by Commission Rule 20 CSR 4240-3.305.[99]

49. The feasibility study provides insight into the financial ramifications of the application, and the effect it may have on ratepayers of the new system and the general body of ratepayers. The projections included in the feasibility study are estimates and not actual costs.[100]

50. MAWC's feasibility study indicates that the purchase of the City's sewer assets will not generate positive income, but the effect of the acquisition of the Hallsville System on MAWC's general population of ratepayers is likely to be negligible.[101]

51. Hallsville's Mayor Logan Carter credibly testified that it is in the public interest for MAWC to own and operate the Hallsville System.[102]

52. The City of Hallsville and the District are parties to contracts to provide wastewater treatment, via the Hallsville System, to District customers in the Sunnyslope and Silver Creek subdivisions located outside the city limits (Cooperative Agreements).[103]

53. The Silver Creek subdivision is receiving sewer service from the City of Hallsville, but the Sunnyslope subdivision has not been connected to the Hallsville System.[104]

[98] Ex. 3, Horan Surrebuttal, p. 6
[99] Ex. 1, Horan Direct, p. 7. Schedule MH-4C.
[100] Ex. 102, Young Rebuttal, p. 3.
[101] Ex. 100, Corrected Busch Direct, Schedule JAB-d2, p. 15; Ex. 3, Horan Surrebuttal, p.5.
[102] Ex. 2, Carter Direct, p. 5.
[103] Ex. 1, Horan Direct, p. 4; Ex. 2, Carter Direct, p. 4.
[104] Transcript Vol. 2 at p. 130.

Conclusions of Law

GG. The Commission may take official notice to the same extent as the courts take judicial notice.[105] Judicial notice permits the court and jury to rely upon known facts without additional proof because such facts constitute either "judicial knowledge" or "common knowledge."

HH. A certificate of convenience and necessity does not override or repeal any existing authority of municipalities or counties. It simply allows the utility "to exercise the rights and privileges presumably already conferred upon it by state charter and municipal consent."[106]

II. The Hallsville board of alderman is authorized to sell the municipality's wastewater system after an ordinance is passed setting the terms of the sale and is ratified by a majority of the voters voting on the question.[107]

JJ. The Commission may grant a certificate of convenience and necessity after determining the proposed service is "necessary or convenient for the public service."[108]

KK. The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed service "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.[109]

LL. While controlling statutes provide no "specific criteria" to guide the

[105] Section 536.070(6) RSMo.
[106] *Stopaquila.org v. Aquila, Inc.,* 180 S.W.3d 24, 40 (Mo. App. W.D. 2005) (emphasis supplied) (citing *State ex. inf. Shartel v. Missouri Utilities Co.,* 331 Mo. 337, 53 S.W.2d 394, 399 (1932).
[107] Section 88.770.1 RSMo (Cum. Supp. 2020). This statute was amended effective August 28, 2019. Among other changes the amendment authorizes the municipal sale of a wastewater systems on a simple majority vote.
[108] Section 393.170.3, RSMo (Cum. Supp. 2020).
[109] *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).

Commission's determination of public convenience or necessity,[110] the Commission considers five criteria which are commonly referenced as the "Tartan factors." The Tartan Factors are as follows: [111]

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.

MM. 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.[112]

NN. Commission Rule 20 CSR 4240-3.305 requires that applications for certificates of convenience and necessity for a sewer utility include a feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations.

Decision

MAWC seeks a CCN to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Hallsville, Missouri, as an addition to MAWC's existing service territories. This necessarily would involve the Hallsville System, a

[110] *United for Mo. v. Pub. Serv. Comm'n*, 515 S.W.3d 754, 759 (Mo. App. W.D. 2016) (citing *State ex rel. Ozark Elec. Coop v. Pub. Serv. Comm'n*, 527 S.W.2d 390, 394 (Mo. App. 1975)).
[111] *In re Tartan Energy,* Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).
[112] *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

municipal system not under the Commission's jurisdiction, becoming a private system subject to the Commission's jurisdiction.

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." The rule does not establish a standard for granting a CCN. When applying for a CCN, the burden of establishing that an application is "necessary or convenient for the public service" rests on the applying party. The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in the case *In Re Intercon* Gas, Inc., 30 Mo P.S.C. (N.S.) 554, 561 (1991). The Intercon case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

There is a present and future need for the service. The CCN is needed primarily because MAWC's acquisition of the Hallsville System benefits both the City of Hallsville and its customers. Over 660 Hallsville residents currently make use of the existing sewer system. Hallsville has additional contracts to provide service to two subdivisions outside of Hallsville. Hallsville's population growth is increasing. The Hallsville System has had frequent problems complying with the Missouri State Operating Permit and there is a present need for the Hallsville System to be brought into compliance with the Missouri State Operating Permit. MAWC's acquisition of the Hallsville System will not result in

duplication of service as the District has no sewer assets located in Hallsville and it is not currently authorized to provide service in Hallsville.

MAWC is an existing water and sewer corporation and public utility subject to the jurisdiction of the Commission. MAWC has demonstrated that it is qualified to provide the service as it is currently providing water service to approximately 470,000 customers and sewer service to more than 15,000 customers in Missouri. Staff's witness credibly testified that MAWC "demonstrates the requisite [technical, managerial, and financial][113] capabilities by displaying it has adequate resources to operate utility systems it owns, acquires, constructs, expands, as well as perform capital improvements and respond to emergency situations should they arise."[114] MAWC has shown the financial ability to provide the service and does not anticipate any external financing. MAWC has also demonstrated that it has sufficient funds available to make the necessary investments in the Hallsville System to bring it into compliance with Commission and DNR regulations.

The proposal to purchase and operate the Hallsville System is economically feasible according to MAWC's feasibility study. That study is realistic given their experience and history of performance. While the system will initially run at a deficit, MAWC's financial standing is such that this situation will not impact its ability to provide safe and adequate service. The effect of this transaction on MAWC's general population of ratepayers is likely negligible.

The District argues that the application does not promote the public interest. Much of that argument centers on DNR being unable to issue an operating permit, and that argument has already been addressed within this order. The District also asserts that "the

[113] In addition to the Tartan Factors, Staff reviews an applicant's technical, managerial, and financial capabilities (TMF). Staff asserts that TMF capacity helps lead to sustainable systems.
[114] Ex. 101, Robertson Surrebuttal, p. 3.

competition offered by MAWC is undesirable and destructive and will result in duplication of service or unnecessary services that are not in the interest of the public as a whole."[115] Both competition and duplication of services necessarily involve utilities providing the same service in the same area. As MAWC points out, the Hallsville System is already providing service to over 660 customers that are not the District's customers. MAWC's purchase of the Hallsville System will not result in duplication of services, but merely the transfer of ownership of an existing service and its customers.[116]

The proposal promotes the public interest as demonstrated by Hallsville residents voting overwhelmingly to sell the city's sewer assets to MAWC. Hallsville's system has a history of failure to comply with the Missouri State Operating Permit and is considered to be "under enforcement" by DNR's water protection enforcement section. Staff's witness described the Hallsville System as a small system with "environmental issues."[117] Currently Hallsville has no plan to address the improvements to the system that are needed. Hallsville's Mayor testified that it would be too expensive for Hallsville residents for the municipality to provide funding to fix the Hallsville wastewater system. MAWC has acquired systems similarly situated to Hallsville's system and invested the necessary capital to improve those systems and bring them into compliance.

The Commission finds that the factors for granting a certificate of convenience and necessity to MAWC have been satisfied and that it is in the public's interest for MAWC to provide sewer service to the customers currently served by Hallsville. The Commission

[115] District Reply Brief, p. 1.
[116] This transfer would include the existing District customers in the Sunnyslope and Silver Creek Subdivisions that the Hallsville System will serve pursuant to two cooperative agreements.
[117] Transcript Vol. 2, p. 138-139

will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to acquire the Hallsville sewer assets.

C. What conditions should be imposed on a CCN issued to MAWC for the Hallsville System?

Findings of Fact

54. In File No. WR-2017-0285, the Commission ordered water and sewer depreciation rates applicable to all divisions of MAWC.[118] Those depreciation rates were carried forward and adopted in MAWC's most recently resolved general rate case, File No. WR-2020-0344.[119]

55. MAWC does not pursue rate cases on a system by system basis. MAWC cannot raise Hallsville's rates without initiating a general rate case that would include all of MAWC's Missouri service areas.[120]

Conclusions of Law

OO. The Commission may impose "such condition or conditions as it may deem reasonable and necessary," when issuing a CCN.[121]

PP. Authority conferred by a CCN is null and void unless "exercised within a period of two years" of the date the certificate is granted.[122]

QQ. The Commission can neither "enforce, construe nor annul" contracts.[123]

Decision

Staff recommends the Commission grant MAWC a CCN for the Hallsville System, subject to a set of conditions, which MAWC has agreed to accept. Most of the conditions

[118] Ex. 100, Corrected Busch Direct, p. 2, Schedule JAB-d2, p. 16.
[119] Ex. 306, Commission Order: Stipulation and Agreement ¶ 13; Transcript Vol. 2 at p. 196-199.
[120] Transcript Vol. 2, p. 140.
[121] Section 393.170.3, RSMo.
[122] Section 393.170.3, RSMo.
[123] *Staff of the Mo. Pub. Serv. Comm'n v. Consol. Pub. Water Supply Dist. C-1*, 474 S.W.3d 643, 657 (Mo. App. W.D. 2015).

proposed by Staff are conditions that are often ordered by the Commission when existing water and sewer systems are acquired. These conditions provide for the accurate filing of service area maps and legal descriptions, as well as tariffs governing the provision of service, and require other company filings to insure adequate customer service. The Commission finds these conditions are reasonable and necessary and will approve all such recommended conditions.

However, the Commission will not approve as proposed by Staff a condition to address continuation of service to District customers in the Sunnyslope and Silver Creek subdivisions. The Commission finds Staff's recommendation – that the Commission direct MAWC to negotiate new agreements with the District – poses a risk, particularly in this contentious case, that negotiations will fail. Therefore, the Commission will require that, as a condition of the CCN, MAWC maintain service to District customers in the Sunnyslope and Silver Creek subdivisions on the same terms as those provided by the existing agreements between the City of Hallsville and the District and for the period provided by the Cooperative Agreements.

This condition is necessary to maintain service to District customers, including customers in the Silver Creek subdivision, which lacks an alternative source of sewer service. While MAWC contended, in an effort to avoid the District's intervention in this case, that MAWC is not contractually bound to the Cooperative Agreements by the Hallsville purchase agreement,[124] construction and enforcement of contracts exceeds the scope of the Commission's jurisdiction. Therefore, the Commission does not purport to construe those contracts. Nonetheless, the Commission finds that it is in the public interest to avoid a loss of service to District customers as a result of MAWC's acquisition and operation of

[124] *MAWC's Response in Opposition to BCRSD's Application to Intervene*, p. 3-4 (Aug. 31, 2020).

the Hallsville System. For that reason, the Commission finds it is necessary to require MAWC to maintain service to District customers in the Sunnyslope and Silver Creek subdivisions. In addition, the Commission finds the Cooperative Agreements provide for service on reasonable terms.

The District has also presented five proposed conditions that it requests the Commission attach to any CCN issued to MAWC for the Hallsville System. The District asks the Commission to impose conditions on any CCN to MAWC in this case to require MAWC to (1) continue service to District customers; (2) obtain a DNR operating permit within two years of issuance of the CCN; (3) obtain consent from the District for plans to address Hallsville System capacity and "compliance" issues before applying to DNR for a construction or operating permit; (4) prohibit MAWC from applying to convert the Hallsville System to a "discharge" facility under DNR regulations; and (5) require MAWC to own any land used for land application of wastewater in the Hallsville System.[125]

Other than a condition to ensure continued service to District customers, which is addressed above, the Commission finds that the conditions requested by the District are neither reasonable nor necessary. The District requests the Commission condition a CCN to MAWC on a requirement that MAWC acquire a DNR permit for the Hallsville System within two years. MAWC counters with a request that any condition require MAWC to *apply for* a permit within two years.[126] The Commission finds that a condition imposing a time limit for applying for or securing a DNR permit is neither reasonable nor necessary on these facts.

[125] *District's Post-Hearing Brief*, p. 20-25 (June 9, 2021); *District's Position Statement*, p. 3-4 (March 24, 2021).
[126] At hearing, counsel for MAWC indicated it did not contest a proposed condition requiring MAWC to obtain a permit within two years, Transcript Vol. 2 p. 48, 65-67, but that position changed in post-hearing briefs. *See Missouri-American's Initial Brief*, p. 11-12 (June 9, 2021).

Section 393.170.3, RSMo (Cum. Supp. 2020), provides that the authority "conferred" by a CCN is "null and void" if not "exercised" within two years of issuance. Counsel for the District advised during hearing that the District reads Section 393.170.3 to require MAWC to acquire a permit within two years, or a CCN will be rendered null and void under the statute.[127] If the District is correct, a condition that duplicates a statutory mandate is unnecessary. The District offered no factual justification to explain why the Commission's order should be concerned with the duration of the DNR permitting process. With no purpose stated on the record – other than the District's general opposition to MAWC's acquisition of the Hallsville System, the Commission finds it would be unreasonable in this case to impose a stopwatch on the DNR permit process, particularly when DNR's regulations specifically require applicants to seek a CCN before a permit. The Commission anticipates MAWC must proceed to acquire all necessary permits to operate the Hallsville System, and no additional condition need be imposed to that end.

Nor is the Commission persuaded that the CCN granted here should be conditioned on District consent and approval of MAWC proposals for the operation or modification of the Hallsville System. First, the District has consistently asserted that DNR may not issue a permit to MAWC over the District's objection. Thus, if District approval is required for a permit application before DNR, such a condition in this Commission's order is unnecessary. Alternatively, should DNR conclude it has authority to issue a permit to MAWC over the District's objections, any condition in this Commission's order that would also require the District's approval may inappropriately encroach on the statutory authority of DNR and the Clean Water Commission.

[127] Transcript Vol. 2 at p. 65-66; *See also District's Reply Brief*, p. 8 (June 16, 2021).

Similarly, whether the Hallsville System should be authorized to operate as a "discharge" facility is clearly within the authority of DNR and Clean Water Commission. If state law and DNR regulations do not prioritize the District's position on such an issue, no facts have been presented in this case to justify imposing such a preference. Likewise, the District's request that the Commission require MAWC to own any land used for wastewater application suffers from the same problem. DNR has the expertise and authority to determine the appropriate specifications and limitations on any permit it issues to MAWC for the Hallsville System. Such a technical issue, in this case, belongs before DNR. Therefore, the Commission will not condition the CCN granted to MAWC as the District has requested.

Finally, the Commission will grant MAWC'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 MAWC's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before it filed its application.

THE COMMISSION ORDERS THAT:

1. MAWC is authorized to acquire the sewer assets of the City of Hallsville.

2. MAWC is granted a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Hallsville, Missouri.

3. The authority granted by this order is subject to the following conditions:

    a. MAWC is granted a CCN for a service area that includes only the territory of the incorporated City of Hallsville and any Hallsville System facilities located outside city limits;

    b. MAWC shall adopt the existing sewer rates for the City of Hallsville;

c. MAWC shall maintain sewer service to District customers receiving sewer service from the City of Hallsville, consistent with the terms of the City of Hallsville-Boone County Regional Sewer District Cooperative Agreements dated January 14, 2019, and April 8, 2019, as contained in Exhibits 303 and 304.

d. Before submitting revised tariffs, MAWC shall file a revised service area map and corresponding legal description that includes all Hallsville System assets to be acquired, including storage basins and underground wastewater lines;

e. MAWC shall submit new and revised tariff sheets to take effect before closing on the Hallsville System;

f. MAWC shall notify the Commission within five days of closing on the Hallsville System;

g. If closing on the Hallsville System does not occur within 30 days after the effective date of this order, MAWC shall file a report on the status of the transaction 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 MAWC files a notice stating closing will not occur;

h. MAWC shall notify the Commission if MAWC determines it will not acquire the Hallsville System. At such time, MAWC shall submit tariff sheets as appropriate and necessary to cancel service area maps, descriptions, rates and rules applicable to the Hallsville System;

i. MAWC shall create and keep financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts;

j. Depreciation rates ordered for MAWC in File No. WR-2020-0344 shall apply to the Hallsville System;

k. Before closing or at closing, MAWC shall obtain from the City of Hallsville all available plant-in-service records and documents, including all plant-in-service original cost documentation, with depreciation reserve balances; documentation of contribution-in-aid-of-construction transactions; and any capital recovery transactions.

l. After closing, MAWC shall include the Hallsville System in MAWC's monthly customer service and billing reports to the Commission's Customer Experience Department;

m. MAWC shall train its call center personnel regarding rates and rules applicable to the Hallsville System;

n. Within 30 days of closing, MAWC shall distribute to Hallsville System customers an informational brochure detailing the rights and responsibilities of the utility and customers regarding sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13;

o. Within 10 days after closing, MAWC shall provide the Customer Experience Department an example of actual communication with Hallsville System customers regarding the acquisition and operation of the Hallsville System, including information about how customers may contact MAWC;

p. Within 30 days after closing, MAWC shall provide to the Commission's Customer Experience Department a sample of 10 billing statements from MAWC's first month of billing for the Hallsville System; and

q. MAWC shall file notice within 10 days when the requirements stated in items (m), (n), (o), and (p) are complete.

4. The Commission imposes no condition that addresses the two-year provision of Section 393.170.3, RSMo (Cum. Supp. 2020).

5. The Commission makes no finding that precludes the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

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

7. This report and order shall be effective on December 17, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of Union Electric Company, d/b/a Ameren Missouri for Order Approving a Letter Agreement Allowing the Transfer of Certain Electric Customers to the Board of Municipal Utilities of the City of Sikeston, Missouri	)))))))	**File No. EO-2021-0401**

REPORT AND ORDER APPROVING TERRITOTIAL AGREEMENT

CERTIFICATES

§55.2. Territorial agreement

The Commission approved a territorial agreement submitted by Union Electric Company, d/b/a Ameren Missouri and the Board of Municipal Utilities of the City of Sikeston, Missouri that will make BMU the exclusive service provider for six customers previously served by Ameren Missouri located within the boundary of the City of Sikeston in Scott 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 1st day of December, 2021.

In the Matter of the Joint Application of Union Electric Company, d/b/a Ameren Missouri for Order Approving a Letter Agreement Allowing the Transfer of Certain Electric Customers to the Board of Municipal Utilities of the City of Sikeston, Missouri	)))))))	**File No. EO-2021-0401**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: December 1, 2021 Effective Date: December 11, 2021

This order approves the Territorial Agreement between Union Electric Company, d/b/a Ameren Missouri and the Board of Municipal Utilities of the City of Sikeston, Missouri (BMU) (collectively "Joint Applicants") that will make BMU the exclusive service provider for six customers previously served by Ameren Missouri located within the boundary of the City of Sikeston in Scott County, Missouri. The Joint Applicants have also requested a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017.

Findings of Fact

1. Ameren Missouri is a corporation engaged in the generation, transmission, distribution, and sale of electricity in portions of Missouri. Ameren Missouri is an "Electrical corporation" and "Public utility" under Section 386.020(15) and (43), RSMo and is subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and

393, RSMo. Ameren Missouri's principal office and place of business are at One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103. [1]

2. BMU is a municipally owned electric utility operating under Chapter 91 RSMo, with its principal office at 107 East Malone Avenue, Sikeston, Missouri, 63801. BMU is engaged in the distribution of electric energy and service, but is not considered an electric corporation pursuant to Section 386.020.15 RSMo. The Commission's jurisdiction over BMU is limited.[2]

3. Ameren Missouri currently provides service to six customer accounts via an existing agreement with BMU that has been in place since 1996. Ameren Missouri owns only the metering and the bare minimum in the way of infrastructure to provide service to these customers, and must provide service via BMU pursuant to the 1996 agreement in order to facilitate that service.[3]

4. Ameren Missouri supplies power purchased from BMU at a negotiated rate, and transferred through infrastructure mainly owned by BMU. Ameren Missouri is operating as an intermediary between BMU and these six customer accounts. Shifting these six customers to BMU removes Ameren Missouri as an intermediary.[4]

5. When there are service issues for the six customers, Ameren Missouri must often require those customers to contact BMU for resolution, potentially causing confusion for customers, because BMU serves nearby customers who are not impacted by the 1996

[1] Request for Waiver and Joint Application for Approval of Letter Agreement Regarding Transfer of Customers (May 19, 2021).
[2] Request for Waiver and Joint Application for Approval of Letter Agreement Regarding Transfer of Customers (May 19, 2021).
[3] Request for Waiver and Joint Application for Approval of Letter Agreement Regarding Transfer of Customers (May 19, 2021).
[4] Request for Waiver and Joint Application for Approval of Letter Agreement Regarding Transfer of Customers (May 19, 2021).

agreement. Additionally, service quality is expected to improve by allowing these customers to be served by a single electric distribution utility.[5]

6. These six customers are the last remaining customers in this area receiving service from Ameren Missouri. All other customers that were receiving service under the 1996 agreement have become inactive through attrition.[6]

7. BMU and Ameren Missouri agree that these customers will receive an improved customer service experience and the utilities will experience improved operational efficiencies.[7]

8. On May 19, 2021, the Joint Applicants filed a joint application with the Missouri Public Service Commission to approve a letter agreement transferring six Ameren Missouri electric customer accounts to BMU.[8]

9. The Commission issued notice of the change of supplier and directed its Staff (Staff) to file a recommendation on the transfer of customers by July 23, 2021. Staff filed a request for an extension of time to file its recommendation on July 23, 2021. Staff's request states, "Based on Staff's review and investigation, Staff recommends that the applicants need to enter into a territorial agreement to clearly delineate their respective service areas. Staff requests an extension…to allow time for the Joint Applicants to consider a territorial agreement and submit an updated filing with the Commission." The Commission ultimately granted three extensions at Staff's request.

[5] Request for Waiver and Joint Application for Approval of Letter Agreement Regarding Transfer of Customers (May 19, 2021).
[6] Staff's Supplemental Recommendation (November 3, 2021), attached Memorandum.
[7] Request for Waiver and Joint Application for Approval of Letter Agreement Regarding Transfer of Customers (May 19, 2021).
[8] Request for Waiver and Joint Application for Approval of Letter Agreement Regarding Transfer of Customers (May 19, 2021).The names and addresses of the six customer accounts, as well as the legal descriptions of the area in question, are found in Attachments A and B to Appendix 1 of the application.

10. On October 6, 2021, the Joint Applicants filed their Joint Submission of Territorial Agreement and Territorial Agreement, along with an exemplar tariff sheet reflecting the change in Ameren Missouri's service area. The Territorial Agreement provides that BMU will acquire six customers located within the boundary of Sikeston, Missouri.[9]

11. On November 3, 2021, Staff recommended the Commission approve the Joint Submission of Territorial Agreement and associated Territorial Agreement and order Ameren Missouri to file compliance tariff sheets describing the modification to its service territory. Staff also recommend that the Commission state that no rate-making determinations are being made in this case.[10]

12. Approval of a territorial agreement requires that that the Commission issue a more inclusive notice than in a change of electrical supplier request.[11]

13. On November 5, 2021, the Commission issued notice to the General Assembly representing Scott County, Missouri, and to the newspapers and media serving that county. The Commission also set an intervention deadline and a deadline to respond to Staff's recommendation.[12] No intervention requests or responses were received.

14. Based on the information provided in the verified Second Amended Joint Application filed on July 20, 2021, and Staff's recommendation, the Commission finds the Territorial Agreement establishes exclusive service territories for the two electric suppliers. It will also improve service quality for the six affected customers and minimize customer confusion within a limited geographic area. The establishment of exclusive

[9] Joint Submission of Territorial Agreement (October 6, 2021), Attachment A, Territorial Agreement, and Attachment B, exemplar tariff revision.
[10] Staff's Supplemental Recommendation (November 3, 2021), and attached Memorandum.
[11] Section 394.312.4 RSMo.
[12] Order Directing Filing, November 5, 2021.

service territories will prevent any potential duplication of electric service facilities. The Commission finds that the designation of the electric service area stated in the Territorial Agreement and exemplar tariff sheet is in the public interest and that the Territorial Agreement is not detrimental to the public interest.

Conclusions of Law

A. Section 394.312, RSMo, gives the Commission jurisdiction over electric service territorial agreements, including those between electrical corporations and municipally owned utilities.[13]

B. Pursuant to subsections 394.312.3 and .5, RSMo, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

C. Section 394.312.5, RSMo, provides 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 an agreement was made and no hearing was requested, the Commission may make a determination without an evidentiary hearing.[14]

Decision

Based upon the uncontroverted verified pleadings and Staff's recommendation, the Commission now determines that the material facts in this matter demonstrate the electric service area designation made in the Joint Submission of Territorial Agreement, Attachment B, is in the public interest and that the Territorial Agreement is not detrimental

[13] Section 394.312.1 and .4, RSMo.
[14] *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).

to the public interest. The Commission will approve the Territorial Agreement. The Commission makes no rate-making determinations in connection with its approval of the Territorial Agreement. So that the parties can expedite the filing of compliance tariffs and the change of utilities for these six customers, the Commission will make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The Commission will grant a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017.

2. The Territorial Agreement presented in the Joint Submission of Territorial Agreement, Attachment A, is approved.

3. Ameren Missouri and BMU are authorized to perform the Territorial Agreement and all legal acts and things necessary to performance.

4. No later than December 11, 2021, Ameren Missouri shall file compliance tariff sheets describing the modification of its service territory which include a metes and bounds legal description of the affected parcels.

5. This order shall become effective on December 11, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of Osage Valley Electric Cooperative Association and The City of Rich Hill, Missouri for Approval of a Written Territorial Agreement Designating the Boundaries of Each Electric Service Supplier Within The City of Rich Hill, Bates County, Missouri	))))))	**File No. EO-2022-0073**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT AND GRANTING APPLICATION TO CHANGE ELECTRIC SUPPLIER

ELECTRIC

§4.1. Change of suppliers

Pursuant to Subsections 394.315.2, RSMo, the Commission may order a change of suppliers if in the public interest for a reason other than a rate differential.

§6. Territorial agreements

Pursuant to Subsections 394.312, RSMo, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 1st day of December, 2021.

In the Matter of the Joint Application of Osage Valley Electric Cooperative Association and The City of Rich Hill, Missouri for Approval of a Written Territorial Agreement Designating the Boundaries of Each Electric Service Supplier Within The City of Rich Hill, Bates County, Missouri	))))))	**File No. EO-2022-0073[1]**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT AND GRANTING APPLICATION TO CHANGE ELECTRIC SUPPLIER

Issue Date: December 1, 2021 Effective Date: December 31, 2021

On July 9, 2021,[2] the City of Rich Hill (Rich Hill) and Osage Valley Electric Cooperative ("Joint Applicants") filed a Joint Application for Change of Electric Supplier in EO-2022-0009; and on September 9, 2021, the joint applicants filed a Joint Application for Approval of Territorial Agreement in EO-2022-0073.[3]

In their change of electric supplier application, the joint applicants asked for leave to transfer electric service for all six hundred ninety-six properties served by Rich Hill over to Osage Valley. Approval would allow Rich Hill to discontinue all its customer service and allow Osage Valley to take over and provide that service. The properties are in Bates County. Along with the service change, Osage Valley will purchase Rich Hill's electric system. The structures now served by Rich Hill are located both within and outside the

[1] Consolidated with File EO-2022-0009 on October 22, 2021.
[2] All date references will be to 2021 unless otherwise indicated.
[3] Hereinafter, references to "joint applications" or "joint applicants" will refer, respectively, to the applications and/or applicants in both files unless otherwise indicated.

corporate boundaries of the city. Exhibit A, attached to the change of electric supplier application in File No. EO-2022-0009, lists the affected customers, and that file includes a diagram depicting Rich Hill and Osage Valley's current electric facilities inside and immediately outside the Rich Hill city limits.

Rich Hill conducted a citizen ballot initiative, and the April 2021 ballot results are reflected in File No. EO-2022-0009. Rich Hill, through negotiations and a citizen vote, has committed to have Osage Valley provide its electric service, and Rich Hill terminated its wholesale power purchase contract with Evergy Missouri West (Evergy) on July 27, 2021. Rich Hill had been Evergy's customer for many years. When Rich Hill notified Evergy of its intention not to renew their existing contract, Rich Hill requested proposals from both Osage Valley and Evergy to purchase its electric system and provide service in Rich Hill. On September 9, the joint applicants submitted a territorial agreement dated July 21, 2021, in File No. EO-2022-0073 (Agreement). The agreement contained the list of customers that would be transferred to and served by Osage Valley, described the facilities to be transferred, and provided for final customer meter readings on or before July 27.

On September 10, the Commission issued its Order Directing Notice, Setting Intervention Deadline and Directing Staff Recommendation in File EO-2022-0073. On October 22, the Commission consolidated Files EO-2022-0073 and EO-2022-0009. The Commission's Staff (Staff) filed its Recommendation on November 8. Staff concluded that the Commission should find that the joint applicants' territorial agreement designating Osage Valley as the electric service provider within the city limits of Rich Hill, Missouri, is not detrimental to the public interest. Staff recommended the Commission approve the territorial agreement making Osage Valley the exclusive electric service provider for

current and future structures within the city limits of Rich Hill in Bates County, Missouri. There have been no requests for intervention, and no one has objected to the applications or Staff's recommendation.

FINDINGS OF FACT

1. Osage Valley is a Chapter 394 rural electric cooperative organized and existing under the laws of Missouri with its principal office at 1312 Orange St., Butler, Missouri 64730. Osage Valley is engaged in the distribution of electric energy and service to its members within certain Missouri counties. Osage Valley has no pending actions or final judgments or decisions against it from any state or federal agency or court that involve its customer service or rates within the three years immediately preceding the filing of the joint applications. Osage Valley is not required to file annual reports or pay assessment fees.

2. Rich Hill is a Missouri fourth class municipality existing pursuant to Section 79.010 RSMo,[4] with its principal office and place of business at Rich Hill City Hall, 120 N. 7th, Rich Hill, Missouri 64880. Rich Hill is engaged in the business of providing electrical services to customers in its municipal service area. Rich Hill has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or its rates which have occurred within three years immediately preceding the filing of the joint applications. Rich Hill is not required to file annual reports or pay assessment fees.

3. Rich Hill has requested that Osage Valley purchase its electric system and provide service to all 696 properties in order to ensure reliable electric service now and in the future as well as to achieve operational efficiencies for the electric suppliers and

[4] All references to the Missouri Revised Statutes will be to the 2016 issue.

reduce utility duplication in affected area. The structures now served by Rich Hill are located both within and outside the corporate boundaries of the city.

4. The joint applicants filed and requested approval of a territorial agreement between them on September 9. The territorial agreement is contained within Appendix A of the joint application, File EO-2022-0073. Appendix A is titled "Contract for Purchase and Sale of Distribution Facilities between the City of Rich Hill, Missouri and Osage Valley Electric Cooperative Association dated July 21, 2021." Exhibit A of Appendix A identifies the physical addresses of the properties involved. Exhibit B of Appendix A describes the electric distribution facilities to be transferred as follows: "All electric power lines, transmission lines, distribution lines, and all appurtenances thereto in City's municipal electric power system." Exhibit C of Appendix A is the Bill of Sale between the parties. Exhibit D of Appendix A is a diagram showing the boundaries of Rich Hill as of the effective date.[5]

5. Under Section 394.080.1(4), RSMo, Osage Valley is currently authorized to serve the incorporated rural areas of Bates County, Missouri, including all areas within the boundaries of Rich Hill included in the territorial agreement and all areas otherwise now served by Rich Hill outside the corporate boundaries of the city.

6. A copy of the results of the election wherein the Rich Hill property owners or tenants consented to the sale of Rich Hill's electric utility facilities in a vote of April 6, 2021, is attached to the File EO-2022-0009 joint application.

[5] Defined in the agreement as "the latest of: (i) with respect to all matters requiring approval by the Missouri Public Service Commission ("Commission"), the date on which an order issued by the Commission pursuant to Sections 91.025, 386.310, 386.800, 394.080, 394.160, 394.312, or 394.315, RSMo. 2020, approving this Agreement becomes a Final Order, and (ii) with respect to all other matters, shall be upon the later of the date of execution of this Agreement or the voter approval date. In no event shall this Agreement take effect prior to July 28, 2021.

7. Osage Valley has constructed a three mile transmission line in anticipation of becoming Rich Hill's electric service provider. Because the service voltage of the two electric systems did not match, special adaptive equipment had to be installed. Osage Valley has promised to increase the reliability of the service to Rich Hill's citizens and has pledged to modernize the existing electric system of Rich Hill in matching the operating voltages of the two electric systems. On the basis of these facts, the consent of the affected property owners in a vote of April 6, 2021, and the Commission's review of the joint applications filed in EO-2022-0073 and EO-2022-0009, the Commission finds that the change of suppliers is in the public interest for reasons other than a rate differential, and the territorial agreement is not detrimental to the public interest.

CONCLUSIONS OF LAW AND DECISION

Section 394.315.2, RSMo, applicable to rural electric cooperatives, provides in relevant part that "[t]he public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section."

Section 91.025.2, RSMo, provides that a municipally owned or operated electrical system "shall have the right to continue serving structures and other suppliers of electrical energy may not serve those structures except as permitted in the context of municipal annexation or pursuant to a territorial agreement approved under section 394.312, RSMo." That statute also provides that the Commission, "upon application made by a customer, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction

over municipally owned or operated electric systems to accomplish the purpose of this section."

Section 394.312.1, RSMo, authorizes territorial agreements between rural electric cooperatives and municipally owned utilities. Per Section 394.312.2: "Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, [and] any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality. . . ." Before becoming effective, territorial agreements must receive Commission approval by report and order.[6] Where the matter is resolved by a stipulation and agreement submitted to the commission by all the parties, no evidentiary hearing is required.[7] The Commission may approve the application if it determines that approval of the territorial agreement in total is not detrimental to the public interest.[8]

It is the Commission's decision that through a duly constituted election ballot held on April 6, 2021, Rich Hill's resulting resolution and the joint application filed in File EO-2022-0009, the Commission has jurisdiction per Sections 91.025.2 and 394.315.2, RSMo, to grant the parties' joint application for change of electric supplier if the Commission finds the request is in the public interest for a reason other than a rate differential. The Commission also has jurisdiction to grant their joint application for approval of their territorial agreement per Section 394.312.1, RSMo, if the Commission finds that in total it is not detrimental to the public interest.

[6] Section 394.315.4, RSMo.
[7] Section 394.315.5, RSMo.
[8] Section 394.315.5, RSMo.

All parties have agreed the Commission should approved the proposed territorial agreement, and no person has sought intervention or filed an objection. No evidentiary hearing is required. It is the Commission's decision that the requested change of suppliers for Rich Hill's customers from Rich Hill to Osage Valley is in the public interest for a reason other than a rate differential. It is also the Commission's decision that the territorial agreement is not detrimental to the public interest. The Commission will approve the territorial agreement and the parties' joint request that Osage Valley be the exclusive electric service provider for all territory within Rich Hill's corporate boundaries and all Rich Hill's customers' structures both within and outside of those boundaries.

THE COMMISSION ORDERS THAT:

1. The territorial agreement filed in EO-2022-0073 is approved. Osage Valley shall be the exclusive electric service provider for current and future structures within the city limits of Rich Hill in Bates County, Missouri.

2. The Joint Application for Change of Electric Supplier is granted. Osage Valley is authorized to supply electrical service for all Rich Hill's current customers and customers' structures now within and outside Rich Hill's corporate boundaries.

3. This order shall be effective on December 31, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Graham, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and around the City of Orrick, Missouri	)))))))	**File No. WA-2022-0049**

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

CERTIFICATES

§4. Jurisdiction and powers generally

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

WATER

§2. 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.

§24. Valuation

Section 393.320.5(1), RSMo, states, in part, that the lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 1st day of December, 2021.

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and around the City of Orrick, Missouri.	)))))))	**File No. WA-2022-0049**

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

Issue Date: December 1, 2021 Effective Date: December 31, 2021

Procedural History

On August 25, 2021, Missouri-American Water Company (MAWC) filed the above-referenced application. The application seeks, among other things, authority for MAWC to acquire and operate the assets of a municipal water and sewer system in Orrick, Missouri. The residents of Orrick overwhelmingly approved selling those assets to MAWC in an April 6, 2021 election.

MAWC also asks for a Certificate of Convenience and Necessity ("CCN") to install, own, acquire, construct, operate, control, manage, and maintain those water and sewer systems in Orrick. MAWC is a "water corporation," a "sewer corporation," and "public utility" as those terms are defined in Section 386.020, RSMo (2016), and is subject to the jurisdiction of the Commission. If the Commission approves MAWC's application, MAWC

would provide water service for Orrick's 335 water customers, and sewer service for Orrick's 335 sewer customers.[1]

In addition, MAWC requests the Commission permit it to use Section 393.320 RSMo to establish the rate base of the Orrick water and sewer systems. Finally, MAWC asks the Commission to waive the 60-day notice requirement MAWC would otherwise have to give before filing this case.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On November 16, 2021, the Commission's Staff filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions.

Commission Rule 20 CSR 4240-2.080(13) allows parties ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission issued no order to the contrary of that rule and no party objected to MAWC's application or Staff's recommendation.

Discussion

Certificate of convenience and necessity

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "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 *In Re Intercon Gas, Inc.*[3]

[1] The customer counts are approximate.
[2] Section 393.170.3, RSMo.
[3] 30 Mo P.S.C. (N.S.) 554, 561 (1991).

The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.[4]

There is a need for the service, as the residents of Orrick currently make use of the existing water and sewer system. MAWC is qualified to provide the service**,** as it already provides water service to over 450,000 Missouri customers, and sewer service to over 11,000 Missouri customers. MAWC has the financial ability to provide the service because no external financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is realistic given its prior experience and past performance. The proposal promotes the public interest as demonstrated by Orrick's citizens voting to proceed with MAWC's Asset Purchase Agreement.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to MAWC have been satisfied and that it is in the public's interest for MAWC to provide water and sewer service to the customers currently served by Orrick. Further, the Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the water and sewer system it wishes to purchase from Orrick. Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate of

[4] The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff.

Rate base

MAWC seeks to establish the ratemaking rate base associated with the Orrick water and sewer assets in this matter pursuant to Section 393.320, RSMo.[5] That statute states, in pertinent part:

> The procedures contained in this section may be chosen by a large water public utility, and if so chosen shall be used by the public service commission to establish the ratemaking rate base of a small water utility during an acquisition.

MAWC is a "large water public utility" as it is a "public utility that regularly provides water service or sewer service to more than eight thousand customer connections and that provides safe and adequate service."[6] Orrick is a "small water utility" as it is a "water system or sewer system owned by a municipality that regularly provides water service or sewer service to eight thousand or fewer customer connections."[7]

Section 393.320.3(1), RSMo requires an appraisal to be performed by three appraisers. Such an appraisal has been performed on the Orrick water and sewer system and is attached to MAWC's application. The appraisal contains a joint assessment of the fair market value of the water system and sewer system.

Section 393.320.5(1), RSMo states, in part, that the "lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the

[5] Per the Staff Recommendation, this is the first time a utility has availed itself of this statutory method of establishing the rate base for purchased assets.
[6] Section 393.320.1(1) RSMo.
[7] Section 393.320.1(2) RSMo.

ratemaking rate base for the small water utility as acquired by the acquiring large water public utility. . . .” In this case, the purchase price is equal to the appraised value. That value is $1,510,000, of which $840,000 is for water assets, and $670,000 for sewer assets. Staff’s Recommendation concurs with MAWC’s appraisal of the Orrick water and sewer assets. The appraised value of $1,510,000, together with the reasonable and prudent transaction, closing, and transition costs incurred by MAWC, shall constitute the ratemaking rate base.

Waiver of 60-day notice rule

MAWC’s application also asks the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). MAWC asserts there is good cause for granting such waiver because it did not engage in conduct that would constitute a violation of the Commission’s ex parte rule, and no asset purchase agreement existed within 60 days prior to filing its application. The Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company is granted a certificate of convenience and necessity to provide water and sewer service in the City of Orrick area described in the map and legal description Missouri-American Water Company provided to Staff, subject to the conditions and requirements contained in Staff’s Recommendation, including the filing of tariffs, as set out below:

   a. The Commission approves existing MAWC water Rate A for ‘All Missouri Service Areas Outside of St. Louis County and Outside of Mexico,’ found on 4th Revised Sheet No. RT 1.2, in PSC MO No. 13;

   b. The Commission approves existing MAWC sewer rates found on 5th Revised Sheet No. RT 3.1, in PSC MO No. 26;

c. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively;

d. MAWC shall notify the Commission of closing on the assets within 5 days after such closing;

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

f. If MAWC determines that a transfer of the assets will not occur, MAWC 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 require MAWC to submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the City service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the City service area in both the water and sewer tariffs;

g. MAWC shall develop a plan to book all of the City plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, such that current rate base is broken down as $840,000 for the water system, and $670,000 for the sewer system, along with reasonable and prudent transaction, closing, and transition costs. This plan must be submitted to Staff for review within 60 days after closing on the assets;

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

i. MAWC shall adopt the depreciation rates ordered for MAWC in Case No. WR-2020-0344;

j. Except as required by §393.320, RSMo, the Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the

granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;

k. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Orrick water and sewer system customers;

l. MAWC shall include the Orrick water and sewer system customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;

m. MAWC shall distribute to the City 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 4240-13.040(3), within thirty (30) days of closing on the assets;

n. MAWC shall provide to the CXD Staff an example of its actual communication with the Orrick water and sewer system customers regarding its acquisition and operations of the water system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;

o. MAWC shall provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets;

p. MAWC shall communicate with the City customers concerning the billing date, delinquent date, and billing changes that will occur once the acquisition is approved, and provide a copy of this communication to CXD Staff.

q. MAWC 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 are complete.

2. Missouri-American Water Company is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

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

4. This order shall become effective on December 31, 2021.

5. This file shall be closed on January 1, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, 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 for Certificates of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage, and Maintain a Water System and Sewer System in Bolivar, Polk County, Missouri	)	**File No. WA-2020-0397**

ORDER APPROVING STIPULATION AND AGREEMENT, ASSET TRANSFER, AND CERTIFICATES OF CONVENIENCE AND NECESSITY

EVIDENCE, PRACTICE AND PROCEDURE

§8. Stipulation

Parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case, and the Commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

§8. Stipulation

A nonunanimous stipulation and agreement is any stipulation and agreement entered into by fewer than all of the parties, but if no party objects to a nonunanimous stipulation and agreement within seven days of its filing with the Commission, then the Commission may treat it as a unanimous stipulation.

WATER

§2. 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.

§4. Transfer, lease and sale

The Commission will deny an asset transfer application only if approval would be detrimental to the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of December, 2021.

In the Matter of the Application of Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities for Certificates of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage, and Maintain a Water System and Sewer System in Bolivar, Polk County, Missouri	))))))))	**File No. WA-2020-0397**[1]

ORDER APPROVING STIPULATION AND AGREEMENT, ASSET TRANSFER, AND CERTIFICATES OF CONVENIENCE AND NECESSITY

Issue Date: December 8, 2021 Effective Date: December 18, 2021

On October 15, 2020, Liberty Utilities (Missouri Water) LLC d/b/a Liberty Utilities (Liberty) filed its Application for Certificates of Convenience and Necessity ("CCNs") authorizing it to install, own, acquire, construct, operate, control, manage and maintain a water system and a sewer system in Bolivar, Polk County, Missouri (Bolivar). On October 16, 2020, the Commission issued its Order Directing Notice, Setting Date for Intervention, Consolidating Files and Ordering Staff Recommendation.

Liberty seeks CCNs for water and sewer systems currently owned and operated by Bolivar, and Liberty seeks approval of the transfer of those systems to Liberty. Liberty's application states that Bolivar's voters approved the transfer and authorized a

[1] On October 16, 2020, the Commission consolidated Files WA-2020-0397 and SA-2020-0398 with WA-2020-0397 to be the lead case.

franchise agreement in an election on June 2, 2020. The application states that effective November 27, 2019, Liberty and Bolivar executed the Asset Purchase Agreement Between Liberty Utilities (Missouri Water) LLC and City of Bolivar, Missouri ("APA") attached as Exhibit A of the application.[2]

On April 16, 2021,[3] the Commission Staff (Staff) filed its Recommendation. In addition to obtaining the CCNs, Liberty's application sought to establish the ratemaking rate base associated with the Bolivar water and sewer assets pursuant to Section 393.320, RSMo.[4] A gateway requirement for such treatment is that Liberty be a "large water public utility" per the Section 393.320.1(1), RSMo statutory definition. Although Staff's Memorandum, attached as Appendix A to its recommendation, concluded that Liberty's application met the first four Tartan criteria,[5] Staff recommended, nevertheless, that the Commission deny the CCN application if the Commission determined that Liberty met the Section 393.320, RSMo definition of a "large public water utility," arguing that a CCN based on the appraisal method required under Section 393.320 would not be convenient or necessary for the public service and would not promote the public interest.

On June 16, Liberty filed a Motion for Summary Determination and Request for Ruling that Liberty is a "large public water utility" under Section 393.320, RSMo. On July 28, the Commission issued its Order Denying Motion for Partial Summary Determination and Issuing a Determination on the Pleadings that Liberty is Not a Large Water Public Utility. Thereafter Liberty filed, and on August 25 the Commission denied a Motion for Reconsideration and/or Application for Rehearing.

[2] Designated confidential in accordance with Commission Rule 20 CSR 4240-2.135(2)(A)(3).
[3] All further date references will be to 2021 unless otherwise indicated.
[4] All references to the Missouri Revised Statutes will be to the 2016 issue.
[5] Set out hereinafter in the Conclusions of Law and Decision.

On October 29, the Commission issued its Order Setting Procedural Conference or Directing Filing. On November 12, the parties filed a Global Stipulation and Agreement (Stipulation). The stipulation's signatories are Liberty and the Staff. The terms and conditions of the stipulation are set out and/or incorporated by reference with particularity in the Findings of Fact below. The stipulation states that although OPC is not a signatory, OPC does not object to the Commission's approving the stipulation "as a complete resolution of these dockets." The stipulation requests the Commission's approval of Liberty's application to install, own, acquire, construct, operate, control, manage, and maintain a water system and a sewer system in Bolivar, Polk County, Missouri, subject to the conditions set out in the stipulation.

The stipulation provides that Liberty will initially establish a rate base for the Bolivar systems as of December 31, 2019, utilizing Staff's calculation of a net book value for water and sewer assets[6]; but also provides that the Commission will authorize Liberty to establish a regulatory asset for stipulated amounts related to the water and sewer systems.[7] The parties stipulate that rate recovery of this regulatory asset will be determined in Liberty's next general rate case, "but [that] Staff agrees to support Liberty's rate recovery of this amount."

FINDINGS OF FACT

The Commission officially notices and has considered the application filed on October 15, 2020, exhibits A through I of the application, the Staff Recommendation filed on April 26, 2021, and the stipulation filed on November 12, 2021. The Commission makes the following findings of fact:

[6] $5,566,992 for water and $8,356,492 for sewer.
[7] $1,612,758 for water and $2,368,627 for sewer.

1. Liberty is a Missouri limited liability company with its principal office located at 602 Joplin Street, Joplin, Missouri, 64801, and provides water and sewer services to customers in its Missouri service areas, as certificated by the Commission.

2. Bolivar is a fourth class city located in Polk County, Missouri, with a population of approximately 11,000. The Bolivar systems provide service to approximately 4,690 water connections and 4,786 sewer connections.

3. On November 12, Liberty and the Commission Staff filed a Global Stipulation and Agreement (Stipulation). The stipulation states that although OPC is not a signatory, OPC does not object to the Commission's approving the stipulation as a complete resolution of the dockets.

4. There is a need for the water and sewer service.[8] The source of supply for Bolivar's water systems is groundwater. Bolivar's drinking water system requires relatively minor upgrades.[9] The wastewater system, however, is in noncompliance with a U.S. EPA Administrative Order of Compliance due to inflow and infiltration, causing the treatment plant to violate permit limits, and causing bypassing, which is a discharge of partially treated wastewater.[10] Bolivar's sewer system needs to be brought into compliance to ensure safe and adequate service.[11]

5. Liberty has the technical and managerial capabilities requisite for a CCN.[12] Liberty is an existing water and sewer corporation and public utility subject to the

[8] Staff Recommendation, Official Case File Memorandum, p. 14.
[9] Short-term improvements under consideration by Liberty include upgrades to the SCADA system and replacement of the current gaseous chlorine cylinder supplied disinfection with a chlorine solution supplied alternative. This kind of upgrade is routine and has been done at many water systems in Missouri over the past several years. Staff Recommendation, Official Case File Memorandum, p. 6.
[10] Staff Recommendation, Official Case File Memorandum, pp. 3, 6-7.
[11] Staff Recommendation, Official Case File Memorandum, p. 14.
[12] Staff Recommendation, Official Case File Memorandum, p. 14.

jurisdiction of the Commission. Liberty currently provides water service to approximately 7,636 water customers and sewer service to 638 sewer customers in several service areas throughout Missouri.[13] Liberty is a subsidiary of Algonquin Power & Utilities Corporation, and is affiliated with other companies that undertake some of the tasks associated with utility service, such as customer billing, and technical resources.[14]

6. Liberty has the financial capacity requisite for a CCN. Liberty did not seek approval for financing as part of the application. Liberty, however, separately requested and received the Commission's order approving Liberty's request for long-term financing related to the acquisition of the Bolivar systems, contingent on approval of Liberty's application in the files subject to this order on April 15, 2021 in File No. WF-2021-0016.[15] Liberty has demonstrated over many years that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and to timely respond and resolve emergency issues when such situations arise.[16]

7. Liberty's proposal as stated in its application is feasible. Liberty's feasibility study indicates that the purchase of Bolivar's assets will generate positive income.[17] Liberty can draw upon the significant resources of its parent company should any shortfall arise prior to the next rate case.[18]

[13] Staff Recommendation, Official Case Memorandum, p. 10.
[14] Staff Recommendation, Official Case Memorandum, p. 14.
[15] Staff Recommendation, Official Case Memorandum, p. 14.
[16] Staff Recommendation, Official Case Memorandum, p. 14.
[17] Exhibit D of application, designated "confidential."
[18] Staff Recommendation, Official Case Memorandum, p. 15.

8. Granting Liberty the requested CCN will promote the public interest. The citizens of Bolivar voted to approve the sale of the utility systems, Bolivar's elected officials were involved in the negotiation with Liberty and developed a subsequent purchase agreement between the Bolivar and Liberty. Liberty has the ability and has developed sufficient plans to bring the facility into compliance and cease pollution. Eliminating the public health threat of bypasses is generally in the public interest.

9. Per the stipulation, Liberty will adopt Bolivar's existing rates for all of the Bolivar customers. Liberty will adopt these rates into tariff No. 14 for water customers and No. 15 for sewer customers.

	Customer Charge[19]	Commodity Charge
Water Rates	$18.07	$3.72
Sewer Rates	$30.03	$5.32

10. On June 2, 2020, the citizens of Bolivar voted 743 to 448 in favor of selling Bolivar's water and sewer systems to Liberty.

11. Staff's recommendation includes its review of the maps and legal description for the service area to be covered by the water and sewer CCNs. Per the stipulation, Liberty will submit tariff sheets to become effective before closing on the assets, to include a service area map and service area written description to be included in its EFIS tariffs P.S.C. MO No. 14 and 15, applicable to water service and sewer service in its Bolivar service area.

[19] Includes the first 2,000 gallons of usage, for both water and sewer.

12. Staff's recommendation includes its review of the APA and the Commission has reviewed the APA, attached as Exhibit A, to the application, which contains the following exhibits and schedules:

- Exhibit A Form of Assignment and Assumption Agreement
- Exhibit B Form of Bill of Sale
- Exhibit C Form of Franchise Agreement
- Disclosure Schedule
- Schedule 1.1 – CGE City Grant Easements
- Schedule 2.1(b) Schedule of Certain Service Facilities
- Assigned Contracts, Schedule of Excluded Assets,

CONCLUSIONS OF LAW AND DECISION

Liberty is a "water corporation," a "sewer corporation," and a "public utility," as those terms are defined by Section 386.020, RSMo, and, therefore, is subject to the general regulatory jurisdiction of the Commission. Bolivar is a fourth class city located in Polk County, Missouri. Commission approval is required for the transfer of the Bolivar assets to Liberty.[20] The Commission will deny an asset transfer application only if approval would be detrimental to the public interest.[21]

The Commission may grant a water and 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."[22] The Commission articulated the specific criteria to be used when evaluating applications for utility CCNs in

[20] Section 393.190, RSMo.
[21] *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).
[22] Section 393.170.3, RSMo.

the case *In re Intercon Gas, Inc*., 30 Mo. P.S.C. (N.S.), 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.[23]

Parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case, and the Commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.[24] A nonunanimous stipulation and agreement is any stipulation and agreement entered into by fewer than all of the parties, but if no party objects to a nonunanimous stipulation and agreement within seven days of its filing with the Commission, then the Commission may treat it as a unanimous stipulation.[25]

Liberty and the Staff filed their Global Stipulation and Agreement on November 12. It stated that although OPC is not a signatory of the stipulation, OPC does not object to the Commission's approving the stipulation as a complete resolution. No objections to the stipulation have been filed. The Commission will treat and rule upon the stipulation as unanimous. The Commission will approve the stipulation. It is the Commission's decision that the asset transfer described therein is not detrimental to the public interest and that approval of Liberty CCN application is "necessary or convenient for the public

[23]The factors have been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Ord, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.SW.C.).
[24] Rule 20 CSR 4240-2.115 (1) (A) and (B).
[25] Rule 20 CSR 4240-2.115 (2) (A), (B), and (C).

service." The Commission makes no finding that will preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCNs to Liberty, including expenditures related to the certificated service area, in any later proceeding. Because the parties have agreed or not objected to the stipulation, the Commission believes the order should be effective in less than thirty days and will make it effective in ten days.

THE COMMISSION ORDERS THAT:

1. The Global Stipulation and Agreement (Stipulation) filed on November 12, 2021, is approved.

2. Liberty is granted authority to acquire the Bolivar assets per the terms and conditions of the stipulation described in the body of this order.

3. Liberty is granted CCNs to operate the Bolivar water and sewer systems in the Bolivar service area described in the body of this order, subject to the conditions and actions as stated below:

a. Liberty shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its EFIS tariffs P.S.C. MO No. 14 and 15, applicable to water service and sewer service in its Bolivar service area;

b. Liberty shall notify the Commission of closing on the assets within five days after such closing;

c. If closing on the water and sewer system assets does not take place within 30 days following the effective date of the Commission's order approving this stipulation, Liberty 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 Liberty determines that the transfer of the assets will not occur;

d. If Liberty determines that a transfer of the assets will not occur, Liberty 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 shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Bolivar area in its water tariff, and rate sheets applicable to customers in the Bolivar area in both the water and sewer tariffs;

e. Liberty shall develop a plan to book all of the Bolivar plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan shall be submitted to Staff for review within 60 days after closing on the assets;

f. Liberty shall keep its financial books and records for plant-inservice and operating expenses in accordance with the NARUC Uniform System of Accounts;

g. Liberty shall adopt for Bolivar Water and Sewer assets the depreciation rates ordered for Liberty in Case No. WR-2018-0170;

h. Liberty shall provide to the Customer Experience Department an example of its actual communication with the Bolivar service area customers regarding its acquisition and operations of the Bolivar water and sewer system assets, and how customers may reach Liberty, within ten (10) days after closing on the assets;

i. Liberty shall obtain from Bolivar, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-inservice original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;

j. Liberty shall distribute to the Bolivar 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 4240-13.040(3), within thirty (30) days of closing on the assets;

k. Liberty shall provide to the CXD Staff a sample of ten (10) billing statements from the first month’s billing within thirty (30) days of closing on the assets;

l. Liberty shall communicate with Bolivar customers concerning the billing date, delinquent date, and billing changes that will occur once the acquisition is approved, and provide a copy of this communication to CXD Staff;

m. Liberty shall provide training to its call center personnel regarding rates and rules applicable to the Bolivar customers;

n. Liberty shall include the Bolivar customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and

o. Liberty 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.

4. Liberty shall initially establish rate base for the Bolivar systems as of December 31, 2019, utilizing Staff's calculation of net book value for water and sewer assets ($5,566,992 for water and $8,356,492 for sewer). The stipulation's signatories' recognizing there may be additions/changes since that date, the final rate base amount as of the date of acquisition shall be established in Liberty's next general rate case.

5. The Commission authorizes Liberty to establish a regulatory asset in the amount of $3,981,385 ($1,612,758 for water and $2,368,627 for sewer). Rate recovery of this regulatory asset will be determined in Liberty's next general rate case.[26]

6. Rates for water and sewer service to existing Bolivar customers shall be adopted by Liberty. Liberty shall not consolidate future rates for Bolivar with other rates until such time as the regulatory asset described in paragraph four above has been fully recovered from Bolivar customers. In order to accomplish this, books and records shall be separately maintained for Bolivar.

[26] Per the stipulation, the Commission Staff has agreed to support Liberty's rate recovery in the amounts stated in this paragraph.

7. Liberty is authorized to do and perform, or cause to be done and performed, all such acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

8. This order shall become effective on December 18, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Liberty Utilities (Missouri Water) LLC for Certificates of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage, and Maintain a Water System and Sewer System in Bolivar, Polk County, Missouri	))))))	Case Nos. WA-2020-0397 and SA-2020-0398

GLOBAL STIPULATION AND AGREEMENT

COME NOW Liberty Utilities (Missouri Water) LLC ("Liberty" or "Company") and the Missouri Public Service Commission ("Commission") Staff ("Staff") (collectively, the "Signatories"), and, pursuant to 20 CSR 4240-2.115, present this Global Stipulation and Agreement ("Agreement") as a complete resolution of the above-captioned case. In this regard, the Signatories respectfully state as follows to the Commission:

1. On October 15, 2020, Liberty filed its Application seeking Certificates of Convenience and Necessity ("CCNs") for authority to install, own, acquire, construct, operate, control, manage, and maintain a water system and a sewer system in Bolivar, Polk County, Missouri.

2. The Signatories agree and intend this Agreement to settle all issues with regard to Liberty's Application and the requested CCNs. The Signatories recommend that the Commission approve this Agreement as a just and a fair compromise of their respective positions.

3. Liberty, Staff, and the Office of the Public Counsel ("OPC") are all of the parties to these dockets. Although OPC is not a Signatory to this Agreement, OPC does not object to the Commission approving this Agreement as a complete resolution of these dockets.

4. The Signatories request approval of the Application to install, own, acquire, construct, operate, control, manage, and maintain a water system and a sewer system in Bolivar,

Polk County, Missouri, subject to the following conditions:

a. Require Liberty to submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its EFIS tariffs P.S.C. MO No. 14 and 15, applicable to water service and sewer service in its Bolivar service area;

b. Require Liberty to notify the Commission of closing on the assets within five days after such closing;

c. If closing on the water and sewer system assets does not take place within 30 days following the effective date of the Commission's order approving this Agreement, require Liberty to 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 Liberty determines that the transfer of the assets will not occur;

d. If Liberty determines that a transfer of the assets will not occur, require Liberty to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require Liberty to submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Bolivar area in its water tariff, and rate sheets applicable to customers in the Bolivar area in both the water and sewer tariffs;

e. Require Liberty to develop a plan to book all of the Bolivar plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This

plan should be submitted to Staff for review within 60 days after closing on the assets;

f. Require Liberty to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

g. Adopt for Bolivar Water and Sewer assets the depreciation rates ordered for Liberty in Case No. WR-2018-0170;

h. Require Liberty to provide to the Customer Experience Department an example of its actual communication with the Bolivar service area customers regarding its acquisition and operations of the Bolivar water and sewer system assets, and how customers may reach Liberty, within ten (10) days after closing on the assets;

i. Require Liberty to obtain from Bolivar, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, along with depreciation reserve balances, documentation of contribution-in-aid-of construction transactions, and any capital recovery transactions;

j. Except as required by §393.320, RSMo, make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCNs to Liberty, including expenditures related to the certificated service area, in any later proceeding;

k. Require Liberty to distribute to the Bolivar 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 4240-13.040(3), within thirty (30) days of closing on the assets;

l. Require Liberty to provide to the CXD Staff a sample of ten (10) billing statements from the first month's billing within thirty (30) days of closing on the assets;

m. Require Liberty to communicate with Bolivar customers concerning the billing date, delinquent date, and billing changes that will occur once the acquisition is approved, and provide a copy of this communication to CXD Staff;

n. Require Liberty to provide training to its call center personnel regarding rates and rules applicable to the Bolivar customers;

o. Require Liberty to include the Bolivar customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and

p. Require Liberty to 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.

5. Liberty shall initially establish rate base for the Bolivar systems as of December 31, 2019, utilizing Staff's calculation of net book value for water and sewer assets ($5,566,992 for water and $8,356,492 for sewer). The Signatories recognize there may have been additions/changes since that date. The final rate base amount as of the date of acquisition will be established in Liberty's next general rate case.

6. Additionally, the Signatories request that the Commission authorize Liberty to

establish a regulatory asset in the amount of $3,981,385 ($1,612,758 for water and $2,368,627 for sewer). Rate recovery of this regulatory asset will be determined in Liberty's next general rate case, but Staff agrees to support Liberty's rate recovery of this amount.

7. Rates for water and sewer service to existing Bolivar customers will be adopted by Liberty. Liberty agrees that future rates for Bolivar will not be consolidated with other rates until such time as the regulatory asset described in paragraph five above has been fully recovered from Bolivar customers. In order to accomplish this, books and records will be separately maintained for Bolivar.

8. In presenting this Agreement, none of the Signatories shall be deemed to have approved, accepted, agreed, consented or acquiesced to any procedural principle, and none of the Signatories shall be prejudiced or bound in any manner by the terms of this Agreement, whether approved or not, in this or any other proceeding, other than a proceeding limited to the enforcement of the terms of this Agreement, except as otherwise expressly specified herein. The Signatories further understand and agree that the provisions of this Agreement relate only to the specific matters referred to herein, and no Signatory waives any claim or right which it otherwise may have with respect to any matter not expressly provided for in this Agreement.

9. The terms of this Agreement are interdependent. If the Commission does not approve this Agreement in total, or approves it with modifications or conditions to which a signatory objects, then this Agreement shall be void and no Signatory shall be bound by any of its provisions. The agreements herein are specific to this proceeding and are made without prejudice to the rights of the Signatories to take other positions in other proceedings except as otherwise noted herein.

10. If the Commission does not unconditionally approve this Agreement without

modification, and notwithstanding its provision that it shall become void, neither this Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.080, RSMo, or Article V, Section 18, of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

11. If the Commission unconditionally accepts the specific terms of this Agreement without modification, the Signatories waive, with respect to the issues resolved herein: their respective rights (1) to call, examine and cross examine witnesses pursuant to Section 536.070(2), RSMo; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 536.800.2, RSMo; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo; and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo. These waivers apply only to a Commission order respecting this Agreement issued in this above-captioned proceedings, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

12. This Agreement contains the entire agreement of the Signatories concerning the issues addressed herein.

WHEREFORE, the Signatories hereby respectfully submit this Global Stipulation and Agreement, and request the Commission issue an Order approving the same; and granting any further relief as is just and reasonable under the circumstances.

Respectfully submitted,

Counsel for Liberty:

/s/ Diana C. Carter
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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 12th of November, 2021, and sent by electronic transmission to the Staff of the Commission and the Office of the Public Counsel.

/s/ Diana C. Carter

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 Certificates of Convenience and Necessity	)))))	**File No. WA-2021-0425** **File No. SA-2021-0426**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§1. Generally

The Commission granted Confluence Rivers Utility Operating Company's application for a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain water and sewer systems in Benton, Clay, Pettis, Platte, and Camden Counties in Missouri.

§21.1. Public interest

Confluence Rivers Utility Operating Company's acquisition of these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission, and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served. Each of these systems require substantial repairs and upgrades to continue to provide safe and reliable water, or sewer service, or both to existing and future customers.

§21.2. Technical qualifications of applicant

The Commission found that Confluence Rivers Utility Operating Company 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.

§33. Immediate need for the service

The Commission found there is a current and future need for water and sewer service. The existing customer base for each of the systems being acquired has both a desire and need for service. There is a need for the necessary steps to be taken to update each of the water and sewer systems being acquired by Confluence Rivers Utility Operating Company to ensure provision of safe and adequate service.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 15th day of December, 2021.

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for Authority to Acquire Certain Water and Sewer Assets and for Certificates of Convenience and Necessity	)))))	**File No. WA-2021-0425** **File No. SA-2021-0426**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: December 15, 2021 Effective Date: December 25, 2021

On June 25, 2021, Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed an application with the Commission requesting a Certificate of Convenience and Necessity (CCN) to install, own, acquire, construct, operate, control, manage, and maintain water and sewer systems in Benton, Clay, Pettis, Platte, and Camden Counties in Missouri. The application also request a variance of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1), and a waiver of any requirement that Confluence Rivers provide plans and specifications related to the construction of the distribution and collection systems because it is acquiring existing systems and will not construct systems.

The Commission issued notice and set a deadline for intervention requests, but received none. The Commission also directed its Staff to file a recommendation about Confluence Rivers' application. On November 4, 2021, the Commission's Staff (Staff) recommended the Commission approve Confluence Rivers' request for a CCN, with

16 conditions. On November 15, 2021, Confluence Rivers responded to Staff's recommendation stating that it had no objection to any of the 16 conditions.

Confluence Rivers 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.

Confluence Rivers is a subsidiary of Central States Water Resources, LLC, which also owns and operates six other water and sewer companies in Missouri. Confluence Rivers currently provides water service to approximately 2,440 customers and sewer service to approximately 2,102 customers in Missouri. Confluence Rivers is current on its water and sewer PSC assessment payments, is current on its annual reports, and is in good standing with the Secretary of State's office.

The requested water CCN would allow Confluence Rivers to provide water service by acquiring three existing water systems: The Missing Well, Inc. (The Missing Well), Ozark Clean Water Company's Spring Branch Subdivision (Spring Branch), and Cedar Green Land Acquisition LLC (Cedar Green).

The requested sewer CCN would allow Confluence Rivers to provide wastewater treatment service by acquiring five existing sewer systems: The Missing Well, Shelton Estates Sewer Company (Shelton Estates), Clemstone Sewer District of Platte County (Clemstone), Prairie Heights LLC – Sullivan (Prairie Heights), and Cedar Green.

The Missing Well

The Missing Well is a not-for–profit corporation run by the Home Owners Association that serves approximately 73 water and sewer customers in Benton, County Missouri. This water and sewer system are located on a tract of land near Warsaw

Missouri that already has several developments. The Commission does not currently regulate the Missing Well's water or sewer system.

The water system serves approximately 204 people through 68 active service connections. The Missing Well water system consists of Well #1, which was installed in 1987, Well #2, and Well #3. Well #1 is not currently operating. The developer did not obtain Missouri Department of Natural Resources (DNR) well permits prior to construction of the wells. Well #2 serves a majority of the system with 57 connections and the well water is not disinfected. Well #1 and Well #2 were permitted through a 2021 Noncompliant Well Agreement. The water has not been sampled consistently.

DNR has determined that The Missing Well is in violation of the Safe Drinking Water Act for installing Well #3 without first obtaining a construction permit from DNR, and for installing a multi-family well instead of a community well (Well #2). DNR offered The Missing Well a Compliance Agreement, but The Missing Well has refused to sign the agreement because of a lack of funds to fulfill the agreement. Confluence Rivers anticipates several improvements including a new well house, a ground storage tank, remote monitoring, magnetic flow meters, new piping, and an updated control system.

The Missing Well sewer system consists of a two-cell lagoon that is over 30 years old and was never permitted by DNR. There is no aeration, mixing, or disinfection of the wastewater prior to discharge. It was not constructed in accordance with an engineering report or construction permit, and only provides partial treatment. The lagoon serves approximately 80 acres of residential area and the current operator believes there are no more than 25 houses directly connected to the lagoon, with the other residences having septic tanks or holding tanks.

Confluence Rivers believes that the treatment plant is not currently equipped to treat wastewater to effluent levels that would be acceptable to DNR. The lagoon was the subject of a DNR enforcement action concerning the development's water system, but DNR has not formally inspected the lagoon in the last five years.

The Missing Well currently does not separately charge its customers for either water or sewer service. Confluence Rivers proposes $20 water and $20 sewer rates as an interim rate to recoup a small portion of the operating expenses necessary to run the systems.

Spring Branch

The Spring Branch operates facility is a community public water system located in the Lake of the Ozarks watershed, in Benton County Missouri. The water system serves approximately 131 customers. The Commission does not currently regulate the Spring Branch water system.

Spring Branch is a ground water system with three wells that are normally operated as three separate distribution systems but can be interconnected. All three wells have hydropneumatic pressure tanks and are disinfected with sodium hypochlorite solution.

DNR's last inspection found Spring Branch to be out of compliance with the Missouri Safe Drinking Water Act. DNR identified 20 deficiencies. Some of those deficiencies have been addressed, but the remaining deficiencies will require substantial system improvement.

Staff noted that he above ground portion of the water system appears to be temporary construction with exposed wiring, unsecured chemical injection tubing, and a

poor piping and equipment layout. The system's water storage capacity is limited and does not meet Missouri drinking water standards.

The current water rates for Spring Branch are $30.99 monthly.

Shelton Estates

Shelton Estates is a not-for-profit corporation that provides sewer service to approximately 20 customers in Clay County, Missouri. Shelton Estates Subdivision is located approximately three miles north of Excelsior Springs. The subdivision is platted for 60 total houses, but no houses have been built within the last fifteen years. Shelton Estates is not currently regulated by the Commission.

The existing facility is about 40 years old and includes a two cell facultative lagoon for secondary treatment. The first cell is approximately 50,000 square feet, while the second is approximately 12,000 square feet. Neither is equipped with aeration or mixing and there is no on site electric service. DNR determined that the lagoon has significant noncompliance issues with the Missouri Clean Water Law. The lagoon has been abandoned for over five years. Confluence Rivers anticipates improvements will be necessary for the lagoon.

It is unknown at this time whether Shelton Estates owns the property where the wastewater lagoon is located. The purchase agreement between Shelton Estates and Confluence Rivers will only become effective if and/or when Shelton Estates has free title to the lagoon property.

The current sewer rates for Shelton Estates are $35 per month or $350 per year.

Clemstone

Clemstone is a small public sewer district incorporated by the Circuit Court of Platte County, Missouri, in 1983. Clemstone provides sewer services to approximately 75 customers in Platte County, Missouri. Clemstone is not currently regulated by the Commission.

Clemstone's facility is an extended aeration treatment facility and the treatment process includes flow equalization, activated sludge/aeration treatment, clarification, chlorination & dechlorination. The facility has a design flow of 30,000 gallons per day of domestic sewage and the permit notes an actual flow of 5,900 gallons per day.

DNR found the wastewater treatment system to be out of compliance with the Missouri Clean Water Law. The system has a history of periodically exceeding its permit limits for biological oxygen demand, total suspended solids, E.coli, and ammonia. Confluence Rivers anticipates several necessary improvements.

The current sewer rates for Clemstone are $60.00 per month.

Prairie Heights

Prairie Heights provides sewer services to approximately 19 customers in the Prairie Heights Subdivision, approximately five miles west of Sedalia in Pettis County, Missouri. Prairie Heights is not currently regulated by the Commission.

The Prairie Heights system provides that residential wastewater flows to one of two septic tanks. All houses with a basement connected to the system contain a grinder pump that pumps the wastewater to a septic tank. Wastewater from houses without basements gravity flows to a septic tank. Wastewater from the two septic tanks gravity flows to the treatment system. The treatment system is a recirculating sand filter about

20 years old. The subdivision is not fully built out, so an increase in population could lead to a flow increase.

DNR inspected the system in March 2019 and found that Prairie Heights was in compliance with the Missouri Clean Water Law. However, the results of Staff's Sunshine Request to DNR and Confluence River's regulatory review indicate that Prairie Heights has a history of non-compliance with ammonia effluent limits.

The current sewer rates for Prairie Heights are $25 per month.

Cedar Green Land Acquisition LLC (Cedar Green)

Cedar Green provides water and sewer service to approximately 54 customers. It is a resort development in an unincorporated area of Camden County consisting of two condominium buildings and two residential houses. Cedar Green is regulated by the Commission and its current water and sewer rates were approved in File Nos. WA-2013-0117 and SA-2013-0354.

The Cedar Green water system consists of a well house located on a hill above the condominiums off the main road. The source of water is a 610-foot deep well, drilled in 2004 that extends down to 399 feet. A submersible 30 horsepower electric pump was installed and produces approximately 80 gallons-per-minute. The standpipe has a storage capacity of 59,000 gallons. The water is not chlorinated.

The system is currently DNR compliant. However, Staff inspected the water system and observed that the well house showed signs of deterioration and water damage to the ceiling, walls, insulation, and siding. The piping showed signs of corrosion and pitting. The system controls showed signs of age and are obsolete. A portion of the footings and foundation of the 59,000 gallon tank are undermined from erosion.

The Cedar Green collecting sewer consists of 400 feet of three-inch PVC and a lift station. Sewage from the condominium buildings flows by gravity to a lift station between the two condominium units, which pumps it to the treatment facility. Sewage from the single-family residences flows by gravity to the treatment plant. The wastewater treatment plant is an extended aeration plant.

DNR last inspected the system in August 2018, and the system was found to comply with the Missouri Clean Water Law. Confluence Rivers is proposing to upgrade system controls, install remote monitoring and repair, and replace treatment components as needed. Additionally, Confluence Rivers proposes to repair the mechanical building and wood decking, replace the pump, blower, aeration header, repair the collection system and scum baffle, and install remote monitoring and flow measurement equipment.

The current water rate for Cedar Green is a quarterly flat rate of $80.37 per living unit, and the current sewer rate is a quarterly flat rate of $142.65 per living unit.

Decision

More than ten days have passed since Staff filed its recommendation and no party has objected to Confluence Rivers' application or Staff's recommendation.[1] No party has requested an evidentiary hearing.[2] Therefore, the Commission will rule upon Confluence Rivers' application.

The Commission may grant a water or sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for

[1] Commission rule 20 CSR 4240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.
[2] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

the public service."[3] The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in the case *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.[4] These criteria are also known as the Tartan Factors.[5]

There is a current and future need for water and sewer service. The existing customer base for each of the systems being acquired has both a desire and need for service. In addition, there is a need for the necessary steps to be taken to update each of the water and sewer systems being acquired by Confluence Rivers to ensure provision of safe and adequate service. Confluence Rivers has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable water and sewer service to approximately 2,440 water customers and approximately 2,102 sewer customers in its Missouri service areas. Confluence Rivers has demonstrated that it has adequate resources to operate the utility systems 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 they arise. Confluence Rivers has the financial ability to provide the service, and no

[3] Section 393.170.3, RSMo.
[4] The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).
[5] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

financing approval is being requested. Confluence Rivers will be adopting existing rates for the systems with the exception of The Missing Well, which does not separately charge its customers for water or sewer service. Confluence Rivers proposes $20 water and $20 sewer rates as an interim rate for The Missing Well to recoup some of the operating expenses necessary to run the system. Staff supports the adoption of the existing rates for the systems with rates, and the $20.00 water and sewer rates for The Missing Well and the Commission finds the existing system rates and the proposed $20.00 water and sewer rates for The Missing Well to be just and reasonable.

Confluence Rivers' acquisition of these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission,[6] and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.[7] Each of these systems require substantial repairs and upgrades to continue to provide safe and reliable water, or sewer service, or both to existing and future customers. Most of these systems have a history of DNR violations. The Commission finds that granting a CCN to Confluence Rivers promotes the public interest.

Based on the application and Staff's recommendation, the Commission concludes that the factors for granting a CCN to Confluence Rivers have been satisfied and that it is in the public interest for Confluence Rivers to provide wastewater treatment services to The Missing Well, Spring Branch, Shelton Estates, Clemstone, Prairie Heights, and Cedar Green, and water service to The Missing Well, Spring Branch, and Cedar Green.

[6] *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).
[7] *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

Therefore, the Commission will grant Confluence Rivers' requested CCN, and also order the conditions described in Staff's recommendation. So that Confluence Rivers may expedite its acquisition and repair of these systems the Commission will make this order effective on December 18, 2021.

THE COMMISSION ORDERS THAT:

1. Confluence Rivers is granted a waiver of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1).

2. Confluence Rivers is granted a waiver of any requirement that it provide plans and specifications related to the construction of the distribution and collection systems because it is acquiring existing systems.

3. Confluence Rivers is authorized to acquire, and is granted a CCN to own, install, construct, operate, control, manage, and maintain the water and sewer assets of Cedar Green.

4. Confluence Rivers is authorized to acquire, and is granted a CCN to own, install, construct, operate, control, manage, and maintain the unregulated water and sewer assets of The Missing Well, Shelton Estates, Clemstone, Prairie Heights, and Cedar Green.

5. Confluence Rivers shall set monthly rates for The Missing Well at a flat rate of $20.00 monthly for water service and a flat rate of $20.00 monthly for sewer service.

6. Confluence Rivers shall adopt the current existing water and/or sewer rates for Spring Branch, Shelton Estates, Clemstone, Prairie Heights, and Cedar Green.

7. Confluence Rivers shall file notice to adopt the Cedar Green water and sewer tariffs as P.S.C. MO No. 20 and 21, respectively, to become effective before closing

on the assets. Confluence Rivers file tariff sheets to revise the service area map and service area written descriptions for Cedar Green.

8. Confluence Rivers shall submit tariff sheets for Clemstone, The Missing Well, Prairie Heights, Shelton Estates, and Spring Branch to become effective before closing on the assets, to include a service area map, service area written descriptions, rates and charges to be included in its EFIS tariffs P.S.C. Mo No. 12 and 13, applicable to water and sewer service, respectively.

9. Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing.

10. If closing on the water and sewer assets does not take place within 30 days following the effective date of the Commission's order approving such, Confluence Rivers shall submit a status report within five days after this 30-day period regarding the status of the closing, and additional status reports within five days after each additional 30-day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur.

11. If Confluence Rivers determines that a transfer of the assets will not occur, Confluence Rivers 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 Confluence Rivers shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to Cedar Green, Clemstone, The Missing Well, Prairie Heights, Shelton Estates, and Spring Branch service areas in its water and sewer tariffs, and rate and charges sheets applicable to customers in those service areas in both the water and sewer tariffs.

12. Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts.

13. Confluence Rivers shall evaluate the soil and rock erosion around the Cedar Green ground storage tank and install shoring as required and file a notification in EFIS when completed.

14. Confluence Rivers shall file a notification in EFIS for each facility when construction has been completed to bring The Missing Well, Spring Branch and Shelton Estates into compliance with DNR regulations.

15. Within one year of closing on the assets of The Missing Well, Confluence Rivers shall close and properly abandon Well #1 at The Missing Well in accordance with DNR regulations, and file a notification in EFIS when this abandonment is completed.

16. Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the water and sewer customers in each of the acquired areas.

17. Confluence Rivers shall distribute to the customers in each of the acquired areas an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water or sewer service, or both, consistent with the requirements of Commission Rule 20 CSR 4240-13, within 30 days of closing on the assets.

18. Confluence Rivers shall provide to the Customer Experience Department (CXD) Staff an example of its actual communication with the water and sewer customers of each acquired company regarding its acquisition and operations of the water and sewer

system assets, and how customers may reach Confluence, within 10 days after closing on the assets.

19. Confluence Rivers shall provide to the CXD Staff a sample of billing statements from the first month's billing for each of the acquired companies within 10 days after the initial bill.

20. Confluence Rivers shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing for each acquired company within 10 days after such communications and notifications.

21. This order shall become effective on December 25, 2021.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of Grundy Electric Cooperative and The City of Galt, Missouri for Approval of a Written Territorial Agreement Designating the Boundaries of each Electric Service Supplier Within the City of Galt, Grundy County, Missouri, and Approving the Change of Electric Service Supplier for Customers of the City of Galt Municipal Electric System	))))))))	**File No. EO-2022-0098**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT AND GRANTING APPLICATION TO CHANGE ELECTRIC SUPPLIER

ELECTRIC

§4.1. Change of suppliers
§6. Territorial agreements

The Commission approved a territorial agreement between Grundy Electric Cooperative, Inc. and the City of Galt, and granted a change of supplier for all former City of Galt customers to receive electrical service from Grundy Electric Cooperative, Inc.

§4.1. Change of suppliers
§15. Cooperatives

Pursuant to Section 394.315.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential, and the Commission has jurisdiction over rural electric cooperatives for that purpose.

§6. Territorial agreements

Section 394.312, RSMo 2016, authorizes territorial agreements between rural electric cooperatives and municipally owned utilities. Before becoming effective, territorial agreements must receive Commission approval by report and order. The Commission may approve a territorial agreement between a rural electric cooperative and municipally owned utility if it determines that the 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 at its office in Jefferson City on the 22nd day of December, 2021.

In the Matter of the Joint Application of Grundy Electric Cooperative and The City of Galt, Missouri for Approval of a Written Territorial Agreement Designating the Boundaries of each Electric Service Supplier Within the City of Galt, Grundy County, Missouri, and Approving the Change of Electric Service Supplier for Customers of the City of Galt Municipal Electric System	))))))))	**File No. EO-2022-0098**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT AND GRANTING APPLICATION TO CHANGE ELECTRIC SUPPLIER

Issue Date: December 22, 2021 Effective Date: January 21, 2022

On October 1, 2021,[1] Grundy Electric Cooperative, Inc. (Grundy) and the City of Galt (Galt) (collectively, "Joint Applicants") filed a *Joint Application* for approval of a territorial agreement and change of electric supplier, pursuant to a contract for the purchase and sale of Galt's distribution facilities to Grundy.

In the *Joint Application*, Joint Applicants asked for leave to allow Grundy to purchase Galt's electric facilities and provide electrical service to 114 electric service locations within the corporate boundaries of the City of Galt in Grundy County, Missouri. Approval would allow Galt to discontinue all of its customer service and allow Grundy to take over and provide that service. All relevant properties are located within incorporated rural areas of Grundy County. A diagram of the properties, Galt's existing lines, and Grundy's existing lines is attached to the *Joint Application* as Exhibit D of Appendix A.

[1] All date references are to 2021 unless otherwise indicated.

Also attached to the *Joint Application* is Exhibit A of Appendix A, a list of affected customers whose electric service would be changed if the *Joint Application* is approved, and Appendix C, the certification of election results from an April 6 ballot initiative in which the Galt property owners or tenants approved the sale of Galt's electric utility facilities.

The *Joint Application* includes a territorial agreement within the "Contract for Purchase and Sale of Distribution Facilities between the City of Galt, Missouri and Grundy Electric Cooperative, Inc.," dated August 26 and attached as Appendix A. The contract states that the Galt Board of Aldermen approved the sale of its city-owned electric distribution system to Grundy on July 14.

On October 6, the Commission issued an *Order Directing Notice, Setting Intervention Deadline and Directing Staff Recommendation*. The Staff of the Commission (Staff) filed its Recommendation on November 30. Staff concluded that the Commission should approve the Joint Applicants' territorial agreement designating Grundy as the electric service provider within the municipal limits of Galt, Missouri, and that the territorial agreement is not detrimental to the public interest. There have been no requests for intervention, and no one has objected to the *Joint Application* or Staff's recommendation.

FINDINGS OF FACT

1. Grundy is a Chapter 394 rural electric cooperative organized and existing under the laws of Missouri with its principal office at 4100 Oklahoma Ave., Trenton, Missouri 64683. Grundy is engaged in the distribution of electric energy and service to its members within certain Missouri counties. Grundy has no pending actions or final judgments or decisions against it from any state or federal agency or court that involve its

customer service or rates within the three years immediately preceding the filing of the *Joint Application*. Grundy is not required to file annual reports or pay assessment fees.

2. Galt is a Missouri fourth class municipality existing pursuant to Section 79.010 RSMo,[2] with its principal office and place of business at 102 S. Main St., Galt, Missouri 64641. Galt is engaged in the business of providing electrical services to customers in its municipal service area. Galt has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or its rates which have occurred within three years immediately preceding the filing of the *Joint Application*. Galt is not required to file annual reports or pay assessment fees.

3. Galt has approved a contract with Grundy for Grundy to purchase its electric system and provide service to all 114 service locations in order to ensure reliable electric service now and in the future as well as to achieve operational efficiencies for the electric suppliers and reduce utility duplication in the affected area. The structures now served by Galt are located within incorporated rural areas of Grundy County.

4. On October 1, Joint Applicants filed and requested approval of a territorial agreement between them. The territorial agreement is contained within Appendix A of the *Joint Application*. Exhibit A of Appendix A identifies the physical addresses of the properties involved. Exhibit B of Appendix A describes the electric distribution facilities to be transferred as "all electric distribution facilities, which includes: poles, conductor, transformers, and meters." Exhibit C of Appendix A is the Bill of Sale between the parties.

[2] All references to the Missouri Revised Statutes are to the 2016 issue.

Exhibit D of Appendix A is a diagram of the properties, Galt's existing lines, and Grundy's existing lines.

5. Under Section 394.080.1(4), RSMo, Grundy is currently authorized to serve the incorporated rural areas of Grundy County, Missouri.

6. A copy of the results of the election wherein the Galt property owners or tenants consented to the sale of Galt's electric utility facilities in a vote on April 6 is attached as Appendix C to the *Joint Application*.

7. On October 18, GEC completed construction of a new three-phase feeder line from the Osgood & Humphreys Substation to Galt. Line crews changed out all Galt meters to GEC meters on October 20 and worked with Evergy Missouri West, Galt's previous wholesale electric provider, to transfer service to Grundy. Grundy plans to convert the entire city from 4,160v to 7,200v by upgrading certain single phase lines to three phase, bringing additional three phase feeders into the city, and replacing poles, conductors, and transformers in order to facilitate the upgraded system. Grundy will have three different substations that could be used to supply service to Galt, which Grundy states will enhance their ability to supply reliable service to Galt. On the basis of these facts, the consent of the affected property owners in a vote on April 6, and the Commission's review of the *Joint Application*, the Commission finds that the change of suppliers is in the public interest for reasons other than a rate differential, and the territorial agreement is not detrimental to the public interest.

CONCLUSIONS OF LAW AND DECISION

Section 394.315.2, RSMo, applicable to rural electric cooperatives, states, in relevant part:

> The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section.

Section 91.025.2, RSMo, applicable to municipally owned or operated electric power systems, states, in relevant part:

> Once a municipally owned or operated electrical system, or its predecessor in interest, lawfully commences supplying retail electric energy to a structure through permanent service facilities, it shall have the right to continue serving such structure and other suppliers of electrical energy shall not have the right to provide service to the structure except as might be otherwise permitted in the context of municipal annexation, pursuant to section 386.800 or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by a customer, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential, and the commission is hereby given jurisdiction over municipally owned or operated electric systems to accomplish the purpose of this section.

Section 394.312.1, RSMo, authorizes territorial agreements between rural electric cooperatives and municipally owned utilities. Per Section 394.312.2: "Such territorial agreements shall specifically designate the boundaries of the electric service area of each electric service supplier subject to the agreement, [and] any and all powers granted to a rural electric cooperative by a municipality, pursuant to the agreement, to operate within the corporate boundaries of that municipality. . . ." Before becoming effective, territorial agreements must receive Commission approval by report and order.[3] The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party

[3] Section 394.312.4, RSMo.

requests such a hearing.[4] The Commission may approve the application if it determines that approval of the territorial agreement, in total, is not detrimental to the public interest.[5]

It is the Commission's decision that through a duly constituted election held on April 6, the approval of the Galt Board of Aldermen of the sale of its city-owned electric distribution system to Grundy, and the *Joint Application* filed, the Commission has jurisdiction per Sections 91.025.2 and 394.315.2, RSMo, to grant the parties' joint application for change of electric supplier, if the Commission finds the request is in the public interest for a reason other than a rate differential. The Commission also has jurisdiction to grant their joint application for approval of their territorial agreement per Section 394.312, RSMo, if the Commission finds that, in total, it is not detrimental to the public interest.

All parties have agreed the Commission should approve the proposed territorial agreement, and no person has sought intervention or filed an objection. No evidentiary hearing is required. It is the Commission's decision that the requested change of suppliers for Galt's customers from Galt to Grundy is in the public interest for a reason other than a rate differential. It is also the Commission's decision that the territorial agreement is not detrimental to the public interest. The Commission will approve the territorial agreement and the parties' joint request that Grundy be the exclusive electric service provider for all territory within Galt's corporate boundaries and all Galt's customers' structures within those boundaries.

[4] *State ex rel. Rex Deffenderfer Enterprises, Inc.* v. *Public Service Commission,* 776 S.W.2d 494 (Mo. App. W.D. 1989).
[5] Section 394.312.5, RSMo.

THE COMMISSION ORDERS THAT:

1. The territorial agreement contained within the contract titled “Contract for Purchase and Sale of Distribution Facilities between the City of Galt, Missouri and Grundy Electric Cooperative, Inc.” dated August 26 is approved. Grundy shall be the exclusive electric service provider for current and future structures within the corporate boundaries of the City of Galt in Grundy County, Missouri.

2. The *Joint Application* for a change of electric supplier is granted. Grundy is authorized to supply electrical service for all of Galt’s current customers and current and future structures within the corporate boundaries of the City of Galt in Grundy County, Missouri.

3. This order shall be effective on January 21, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge

DIGEST OF REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF THE

STATE OF MISSOURI

LIST OF DIGEST TOPICS

ACCOUNTING

ACCOUNTING

§2. Obligation of the utility

The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§2. Obligation of the utility

The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§2. Obligation of the utility

The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.
GR-2021-0108 **31 MPSC 3d 407**

§4. Jurisdiction and powers of the State Commission
As provided by Section 393.140, RSMo, the Commission has authority, in its discretion, to prescribe the methods used by electrical corporations to keep accounts, records and books.
EU-2022-0350 **31 MPSC 3d 015**

§7. Duty to keep proper accounts generally
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§7. Duty to keep proper accounts generally
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§7. Duty to keep proper accounts generally
The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.
GR-2021-0108 **31 MPSC 3d 407**

§8. Uniform accounts and rules
As provided by Section 393.140, RSMo, the Commission has authority, in its discretion, to prescribe the methods used by electrical corporations to keep accounts, records and books.
EU-2022-0350 **31 MPSC 3d 015**

§8. Uniform accounts and rules
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§8. Uniform accounts and rules
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§8. Uniform accounts and rules
The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.
GR-2021-0108 **31 MPSC 3d 407**

§10. Additions, retirements and replacements
The Commission found that without a proposal to replace its entire fleet of meters, the utility should replace meters on an as-needed basis and consistent with Commission meter testing sampling rules.
GR-2021-0108 **31 MPSC 3d 407**

§12. Capital account
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§23.1. Employee compensation
The Commission has historically not allowed earnings based compensation to be recovered in rates because those incentives predominantly benefit shareholders and not ratepayers. Incentivizing employees to improve a utility's bottom line aligns the employee interests with the shareholders and not ratepayers.
GR-2021-0108 **31 MPSC 3d 407**

§23.1. Employee compensation
In allowing incentive compensation, the Commission noted that the monetary benefits for which the bonuses are paid are already included in the utility's cost of service.
GR-2021-0108 **31 MPSC 3d 407**

§24. Liabilities
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§38. Taxes
The Commission found it was proper for a Net Operating Loss (NOL) asset balance (which may include NOL Carryover (NOLC)) to be included as an offset to the Accumulated Deferred Income Tax (ADIT) Liability.
GR-2021-0108 **31 MPSC 3d 407**

§38. Taxes
The Commission distinguished the cash obtained by a utility through tax strategy to increase deductions and reduce taxable income as entirely different from the income tax costs included in rates intended to cover current tax payments based on the revenue requirement of a rate case. The law on the inclusion of the NOL asset balance is clear, and the Commission determined that the NOL asset balance should be included in rate base as an offset to Accumulated Deferred Income Tax (ADIT).
GR-2021-0108 **31 MPSC 3d 407**

§38. Taxes
The Commission determined that since a utility was not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the cash working capital (CWC) calculation was inappropriate. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission found that the appropriate expense lag days for income taxes within the CWC

calculation was 365 days.
GR-2021-0108 **31 MPSC 3d 407**

§38.1. Book/tax timing differences
The Commission found it was proper for a Net Operating Loss (NOL) asset balance (which may include NOL Carryover (NOLC)) to be included as an offset to the Accumulated Deferred Income Tax (ADIT) Liability.
GR-2021-0108 **31 MPSC 3d 407**

§38.1. Book/tax timing differences
The Commission distinguished the cash obtained by a utility through tax strategy to increase deductions and reduce taxable income as entirely different from the income tax costs included in rates intended to cover current tax payments based on the revenue requirement of a rate case. The law on the inclusion of the NOL asset balance is clear, and the Commission determined that the NOL asset balance should be included in rate base as an offset to Accumulated Deferred Income Tax (ADIT).
GR-2021-0108 **31 MPSC 3d 407**

§40. Working capital and current assets
The Commission determined that since a utility was not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the cash working capital (CWC) calculation was inappropriate. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission found that the appropriate expense lag days for income taxes within the CWC calculation was 365 days.
GR-2021-0108 **31 MPSC 3d 407**

§42. Accounting Authority orders
The Commission found that costs and savings directly associated with the pandemic were eligible for deferral under an accounting authority order so that those costs and savings could be considered in a future rate case.
EU-2022-0350 **31 MPSC 3d 015**

§42. Accounting Authority orders
The Commission found that the limited exceptions to ordinary accounting practices provided by its order were reasonable given the uncertainty caused by the COVID-19 pandemic. Therefore, the Commission granted, in part, Evergy's application for an accounting authority order.
EU-2022-0350 **31 MPSC 3d 015**

§42. Accounting Authority orders
The Commission found it should not extend the scope of the accounting authority order proceeding to require particular measures as a condition of deferral accounting.
EU-2022-0350 **31 MPSC 3d 015**

§42. Accounting Authority orders
The Commission found that reporting associated with an accounting authority order should be related to the matters addressed by the accounting order.
EU-2022-0350 **31 MPSC 3d 015**

§43. Financial Accounting Standards Board requirements
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction

costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§43. Financial Accounting Standards Board requirements
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§43. Financial Accounting Standards Board requirements
The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.
GR-2021-0108 **31 MPSC 3d 407**

CERTIFICATES

CERTIFICATES

§1. Generally

The Commission granted Missouri-American Water Company's certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in and around Hallsville, Missouri.

SA-2021-0017 **31 MPSC 3d 513**

§1. Generally

The Commission granted Confluence Rivers Utility

Operating Company's application for a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain water and sewer systems in Benton, Clay, Pettis, Platte, and Camden Counties in Missouri.
WA-2021-0425 & SA-2021-0426 **31 MPSC 3d 597**

§4. Jurisdiction and powers generally
The Commission may grant a water corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service".
SA-2021-0074 **31 MPSC 3d 092**

§4. Jurisdiction and powers generally
The Commission may grant a water corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service".
WA-2021-0116 **31 MPSC 3d 104**

§4. Jurisdiction and powers generally
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".
SA-2022-0029 **31 MPSC 3d 317**

§4. Jurisdiction and powers generally
The Commission may grant a water corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service".
WA-2021-0391 **31 MPSC 3d 385**

§4. Jurisdiction and powers generally
The Commission may grant a water corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service".
WA-2022-0049 **31 MPSC 3d 567**

§6. Jurisdiction and powers of the State Commission
The Commission found that the matters to be considered by it and the Clean Water Commission were segregated by Clean Water Commission rules requiring PSC-regulated entities to first seek a certificate of convenience and necessity (CCN) before applying for a permit. The Commission also found that the Commission has the sole authority to grant a CCN. Therefore, the Commission concluded that the Boone County Regional Sewer District's superior status as a continuing authority under Clean Water Commission regulations did not preclude the Commission from issuing a CCN to Missouri-American Water Company.
SA-2021-0017 **31 MPSC 3d 513**

§11. When a certificate is required generally
The Commission found that good cause exists to waive the requirements to file reports pursuant to 20 CSR 4240-10.145, 20.105, 3.175, or 3.190, because the applicant for a certificate of convenience and necessity does not serve retail customers in Missouri.
EA-2021-0167 **31 MPSC 3d 081**

§11. When a certificate is required generally
Certificate of convenience and necessity granted for an electric transmission line may not necessarily include approval of switchyards or switching stations.
EA-2021-0167 **31 MPSC 3d 081**

§11. When a certificate is required generally
The Commission determined that Complainants failed to provide any instance of Grain Belt currently building anything that would require additional authorization.
EC-2021-0059 **31 MPSC 3d 265**

§13. Extension and changes
The Commission granted Union Electric Company d/b/a Ameren Missouri a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under Ameren Missouri's expanded Community Solar Pilot Program.
EA-2020-0371 **31 MPSC 3d 127**

§21. Grant or refusal of certificate generally
The Commission granted Union Electric Company d/b/a Ameren Missouri a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under Ameren Missouri's expanded Community Solar Pilot Program.
EA-2020-0371 **31 MPSC 3d 127**

§21. Grant or refusal of certificate generally
The Commission uses five criteria, sometimes referred to as the "Tartan" factors, 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.
SA-2021-0120 **31 MPSC 3d 219**

§21. Grant or refusal of certificate generally
The Commission granted a certificate of convenience and necessity to Elm Hills Utility Operating Company to provide wastewater treatment service to four residential lots adjacent to Elm Hills' State Park Village service area.
SA-2022-0014 **31 MPSC 3d 325**

§21. Grant or refusal of certificate generally
The Commission granted Ameren Transmission Company of Illinois (ATXI) a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage approximately 15 miles of a new 138 kV transmission line in Perry and Cape Girardeau counties and a new 138 kV to 161 kV switching station at the southern end of the transmission line in Cape Girardeau County (known as the "Whipple Substation").
EA-2021-0087 **31 MPSC 3d 360**

§21. Grant or refusal of certificate generally
The Commission found when granting a certificate of convenience and necessity that the transmission line and substation were needed to create a redundant transmission network to help support Citizens Electric Cooperative's load and also to support the interconnected Union Electric Company, d/b/a Ameren Missouri load served by Ameren Missouri's Wedekind Substation.
EA-2021-0087 **31 MPSC 3d 360**

§21. Grant or refusal of certificate generally
In *In Re Intercon Gas, Inc.,* 3 Mo P.S.C. 554, 561 (1991), the Commission articulated five criteria to guide its determination of whether granting the 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.
GA-2021-0259 **31 MPSC 3d 394**

§21. Grant or refusal of certificate generally
The Commission granted Spire Missouri Inc. a certificate of convenience and necessity to operate a natural gas distribution system in a residential subdivision in Buchanan County, Missouri as a further expansion of its existing certificated area.
GA-2021-0259 **31 MPSC 3d 394**

§21.1. Public interest
The Commission found that Missouri-American Water Company's proposal to acquire the City of Hallsville's sewer system promotes the public interest as demonstrated by Hallsville residents voting overwhelmingly to sell the city's sewer assets to MAWC.
SA-2021-0017 **31 MPSC 3d 513**

§21.1. Public interest
Confluence Rivers Utility Operating Company's acquisition of these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission, and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served. Each of these systems require substantial repairs and upgrades to continue to provide safe and reliable water, or sewer service, or both to existing and future customers.
WA-2021-0425 & SA-2021-0426 **31 MPSC 3d 597**

§21.2. Technical qualifications of applicant
The Commission found that Elm Hills Utility Operating Company 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-2022-0014 **31 MPSC 3d 325**

§21.2. Technical qualifications of applicant
The Commission found that Confluence Rivers Utility Operating Company 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.
WA-2021-0425 & SA-2021-0426 **31 MPSC 3d 597**

§22. Restrictions and conditions
The Commission granted a certificate of public convenience and necessity to Union Electric Company d/b/a Ameren Missouri with conditions as set out in the approved agreement of the parties.
EA-2020-0371 **31 MPSC 3d 127**

§22. Restrictions and conditions
The Commission granted a certificate of public convenience and necessity to Ameren Transmission Company of Illinois (ATXI) with numerous conditions as set out in the approved agreement of the parties. The conditions included numerous easement and rights-of-way acquisition procedures.
EA-2021-0087 **31 MPSC 3d 360**

§33. Immediate need for the service
The Commission found there was a present and future need for the certificate of convenience and necessity primarily because Missouri-American Water Company’s acquisition of

the Hallsville System benefited both the City of Hallsville and its customers.
SA-2021-0017 **31 MPSC 3d 513**

§33. Immediate need for the service
The Commission found there is a current and future need for water and sewer service. The existing customer base for each of the systems being acquired has both a desire and need for service. There is a need for the necessary steps to be taken to update each of the water and sewer systems being acquired by Confluence Rivers Utility Operating Company to ensure provision of safe and adequate service.
WA-2021-0425 & SA-2021-0426 **31 MPSC 3d 597**

§42. Electric and power
Certificate of convenience and necessity granted for an electric transmission line may not necessarily include approval of switchyards or switching stations.
EA-2021-0167 **31 MPSC 3d 081**

§42. Electric and power
The Commission granted Union Electric Company d/b/a Ameren Missouri a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under Ameren Missouri's expanded Community Solar Pilot Program.
EA-2020-0371 **31 MPSC 3d 127**

§42. Electric and power
The Commission granted a certificate of public convenience and necessity to Union Electric Company d/b/a Ameren Missouri with conditions as set out in the approved agreement of the parties.
EA-2020-0371 **31 MPSC 3d 127**

§42. Electric and power
The Commission granted Ameren Transmission Company of Illinois (ATXI) a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage approximately 15 miles of a new 138 kV transmission line in Perry and Cape Girardeau counties and a new 138 kV to 161 kV switching station at the southern end of the transmission line in Cape Girardeau County (known as the "Whipple Substation").
EA-2021-0087 **31 MPSC 3d 360**

§48. Operations under terms of the certificate generally
Certificate of convenience and necessity granted for an electric transmission line may not necessarily include approval of switchyards or switching stations.
EA-2021-0167 **31 MPSC 3d 081**

§51. Modification and amendment of certificate generally
The Commission opined that if Grain Belt were to take action outside the design and engineering authority granted by the certificate of convenience and necessity (CCN) it could be found in violation of a condition that it seek approval of any design and engineering that is materially different from what was presented in its CCN Application. The CCN Order does not provide any time limitation to seek the necessary authority to implement any materially different design and engineering changes, but any request for authority would need to be approved prior to the implementation of any material design and engineering changes.
EC-2021-0059 **31 MPSC 3d 265**

§55.2. Territorial agreements
Territorial agreements must be in writing pursuant to Section 247.172, RSMo (2016). Under the same statute, approvals of territorial agreements must be in the form of a Report and

Order. The statute also provides that territorial agreements must not be detrimental to the public interest.
WO-2021-0254 **31 MPSC 3d 205**

§55.2. Territorial agreements
The Commission approved a territorial agreement submitted by Union Electric Company, d/b/a Ameren Missouri and the Board of Municipal Utilities of the City of Sikeston, Missouri that will make BMU the exclusive service provider for six customers previously served by Ameren Missouri located within the boundary of the City of Sikeston in Scott County, Missouri.
EO-2021-0401 **31 MPSC 3d 552**

§61. Acts or omissions justifying revocation or forfeiture
Section 393.170, RSMo, does not provide a mechanism for the Commission to revoke a certificate of convenience and necessity (CCN) once it has been granted. The Supreme Court of Missouri has also determined that the Commission does not have the authority to revoke a CCN, and there is no statutory provision for a public utility to abandon a CCN. A CCN is only a grant of authority. The Commission determined that because there is no provision for Grain Belt to affirmatively relinquish its CCN, prior to a two-year expiration for inaction, the CCN Order's original grant of authority continues. Complainant's complaint was denied.
EC-2021-0059 **31 MPSC 3d 265**

DEPRECIATION

DEPRECIATION

§9. Generally

The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.
GR-2021-0108 **31 MPSC 3d 407**

§13. Depreciation

The Commission took official notice of the Commission's order approving an agreement to resolve MAWC's most recent rate proceeding, File No. WR-2020-0344. All parties stipulated on the record that the depreciation rates established in File No. WR-2020-0344 constituted the depreciation rates recommended by Staff as a condition of approval of MAWC's application.
SA-2021-0017 **31 MPSC 3d 513**

§17. Life of property

The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.
GR-2021-0108 **31 MPSC 3d 407**

§32. Gas

The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.
GR-2021-0108 **31 MPSC 3d 407**

DISCRIMINATION

DISCRIMINATION

No headnotes in this volume involved the question of Discrimination.

ELECTRIC

ELECTRIC

§3. Certificate of convenience and necessity

The Commission granted Union Electric Company d/b/a Ameren Missouri a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage a solar generating asset and associated facilities in Montgomery County, Missouri, under Ameren Missouri's expanded Community Solar Pilot Program.

EA-2020-0371 **31 MPSC 3d 127**

§3. Certificate of convenience and necessity
The Commission granted a certificate of public convenience and necessity to Union Electric Company d/b/a Ameren Missouri with conditions as set out in the approved agreement of the parties.
EA-2020-0371 **31 MPSC 3d 127**

§3. Certificate of convenience and necessity
The Commission granted Ameren Transmission Company of Illinois (ATXI) a certificate of public convenience and necessity to construct, install, own, operate, maintain, and otherwise control and manage approximately 15 miles of a new 138 kV transmission line in Perry and Cape Girardeau counties and a new 138 kV to 161 kV switching station at the southern end of the transmission line in Cape Girardeau County (known as the “Whipple Substation”).
EA-2021-0087 **31 MPSC 3d 360**

§4.1. Change of suppliers
Pursuant to Subsections 394.315.2, RSMo, the Commission may order a change of suppliers if in the public interest for a reason other than a rate differential.
EO-2022-0073 **31 MPSC 3d 559**

§4.1. Change of suppliers
The Commission approved a territorial agreement between Grundy Electric Cooperative, Inc. and the City of Galt, and granted a change of supplier for all former City of Galt customers to receive electrical service from Grundy Electric Cooperative, Inc.
EO-2022-0098 **31 MPSC 3d 612**

§4.1. Change of suppliers
Pursuant to Section 394.315.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in

the public interest for a reason other than rate differential, and the Commission has jurisdiction over rural electric cooperatives for that purpose.
EO-2022-0098 **31 MPSC 3d 612**

§6. Territorial agreements
Pursuant to Subsections 394.312.3 and .5, RSMo, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.
EO-2021-0388 **31 MPSC 3d 293**

§6. Territorial agreements
Pursuant to Subsections 394.312, RSMo, the Commission may approve the designation of electric service areas if in the public interest and approve a territorial agreement in total if not detrimental to the public interest.
EO-2022-0073 **31 MPSC 3d 559**

§6. Territorial agreements
The Commission approved a territorial agreement between Grundy Electric Cooperative, Inc. and the City of Galt, and granted a change of supplier for all former City of Galt customers to receive electrical service from Grundy Electric Cooperative, Inc.
EO-2022-0098 **31 MPSC 3d 612**

§6. Territorial agreements
Section 394.312, RSMo 2016, authorizes territorial agreements between rural electric cooperatives and municipally owned utilities. Before becoming effective, territorial agreements must receive Commission approval by report and order. The Commission may approve a territorial agreement between a rural electric cooperative and municipally owned utility if it determines that the agreement,

in total, is not detrimental to the public interest.
EO-2022-0098 **31 MPSC 3d 612**

§11. Territorial agreements
Pursuant to Subsections 394.312.3 and 5, RSMo, the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.
EO-2021-0339 **31 MPSC 3d 227**

§14. Rules and regulations
Commission Rule 20 CSR 4240-13.025(1)(A) limits the time period that Evergy West can make adjustments for a billing error to 60 consecutive monthly billing periods (five years) from the earliest date of Evergy West's discovery, inquiry, or actual notification of the billing error. The Commission determined that Complainant demonstrated ten years of overbilling, but because of the Commission's rule she was only entitled to five years reimbursement for the overbilling. Evergy West had already refunded Complainant for five years of overbilling. The Commission denied Complainant's complaint and directed Evergy West to investigate whether Complainant was overcharged for a second pole light, and to credit her account accordingly.
EC-2020-0088 **31 MPSC 3d 113**

§14. Rules and regulations
The electric utility's tariff did not authorize it to require a customer to sign a release and indemnification to choose to have a non-standard meter installed at their residence.
EC-2020-0252 **31 MPSC 3d 338**

§15. Cooperatives
Pursuant to Section 394.315.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in

the public interest for a reason other than rate differential, and the Commission has jurisdiction over rural electric cooperatives for that purpose.
EO-2022-0098 **31 MPSC 3d 612**

§17. Abandonment and discontinuance
The Commission rejected the argument of Complainants, composed of several Missouri landowners, who filed a complaint alleging that that Respondents violated the Commission's previous order granting a certificate of convenience and necessity (CCN) by issuing a press release, and publishing on a website, changes to the transmission line project not approved by the Commission in its CCN Order. Complainants contended the changes mean that Grain Belt had abandoned the CCN it was granted and could no longer exercise the right of eminent domain.
EC-2021-0059 **31 MPSC 3d 265**

§18. Depreciation
Commission Rule 20 CSR 4240-3.175(1) provides that "[e]ach electric utility subject to the commission's jurisdiction shall submit a depreciation study, database and property unit catalog ("submissions") to the manager of the commission's energy department and to the Office of the Public Counsel. . . ." Commission Rule 20 CSR 4240-3.175(2) provides that the Commission may waive or grant a variance from the provisions of this rule, in whole or in part, for good cause shown, upon a utility's written application.
EE-2021-0423 & EE-2021-0424 **31 MPSC 3d 288**

§27. Accounting
In addition to its authority to prescribe uniform accounting methods, the Commission is authorized by Section 393.140(4) to order the forms of accounts, records and memoranda to be kept by electrical corporations, and is authorized by Section 393.140(8) to require electrical

corporations to answer Commission inquiries and file specific reports.
EU-2020-0350 **31 MPSC 3d 015**

§31. Equipment
Surge protection devices are electric plant. These devices are to be used in connection with the distribution, sale or furnishing of electricity. The Commission is not permitted to graft policy reasons, however sound, onto the plain meaning of the controlling statue.
ET-2021-0082 **31 MPSC 3d 250**

§41. Billing practices
Commission Rule 20 CSR 4240-13.025(1)(A) limits the time period that Evergy West can make adjustments for a billing error to 60 consecutive monthly billing periods (five years) from the earliest date of Evergy West's discovery, inquiry, or actual notification of the billing error. The Commission determined that Complainant demonstrated ten years of overbilling, but because of the Commission's rule she was only entitled to five years reimbursement for the overbilling. Evergy West had already refunded Complainant for five years of overbilling. The Commission denied Complainant's complaint and directed Evergy West to investigate whether Complainant was overcharged for a second pole light, and to credit her account accordingly.
EC-2020-0088 **31 MPSC 3d 113**

§41. Billing practices
Complainant alleged that Evergy West (known as KCP&L Greater Missouri Operations Company at the time the complaint was filed) incorrectly charged her over ten years for a utility light pole that was destroyed in a fire in April of 2009.
EC-2020-0088 **31 MPSC 3d 113**

§43. Accounting Authority orders
The Commission found that costs and savings directly associated with the pandemic were eligible for deferral under an accounting authority order so that those costs and savings could be considered in a future rate case.
EU-2020-0350 **31 MPSC 3d 015**

§43. Accounting Authority orders
The Commission found that the limited exceptions to ordinary accounting practices provided by its order were reasonable given the uncertainty caused by the COVID-19 pandemic. Therefore, the Commission granted, in part, Evergy's application for an accounting authority order.
EU-2020-0350 **31 MPSC 3d 015**

§43. Accounting Authority orders
The Commission is not bound by stare decisis and determines each accounting authority order application on its distinct facts.
EU-2020-0350 **31 MPSC 3d 015**

§43. Accounting Authority orders
The Commission found it should not extend the scope of the accounting authority order proceeding to require particular measures as a condition of deferral accounting.
EU-2020-0350 **31 MPSC 3d 015**

EVIDENCE, PRACTICE AND PROCEDURE

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

The Commission determined that the submitted application was mis-titled and corrected it on its own motion.
WO-2021-0254 **31 MPSC 3d 205**

§2. Jurisdiction and powers

The Commission may interpret its own orders and ascribe to them a proper meaning. Denial of the power of the

Commission to ascribe a proper meaning to its orders would result in confusion and deprive it of power to function.
EC-2021-0034 **31 MPSC 3d 066**

§2. Jurisdiction and powers
The Commission determined that the submitted application was mis-titled and corrected it on its own motion.
WO-2021-0254 **31 MPSC 3d 205**

§2. Jurisdiction and powers
Section 386.390(1), RSMo, gives the Commission jurisdiction to hear complaints about "any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or any order or decision of the commission."
GC-2021-0315 **31 MPSC 3d 211**

§2. Jurisdiction and powers
Section 386.390(1), RSMo, gives the Commission jurisdiction to hear complaints about "any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or any order or decision of the commission."
GC-2021-0316 **31 MPSC 3d 215**

§2. Jurisdiction and powers
The Commission's Staff argued that Complainant's complaint should be dismissed with prejudice pursuant to Missouri Rule of Civil Procedure 67.01. Staff argues that Complainant did not show up to his evidentiary hearing, which was essentially a continuation of his prior complaint that was dismissed for Complainant's failure to appear at a

prehearing conference. The Commission was sympathetic to Staff's frustration and concern that Complainant may be wasting the Commission's resources and abusing the Commission's rules and procedures in an effort to avoid paying legitimate utility charges. However, Missouri Rule of Civil Procedure 67.01 is merely definitional and applies to Missouri courts and not the Commission.
WC-2020-0407 **31 MPSC 3d 299**

§2. Jurisdiction and powers
While the Commission may determine, pursuant to a complaint, whether a public utility has violated a statute subject to the Commission's authority, or a Commission rule, order or tariff, the Commission does not have authority to award damages.
EC-2020-0252 **31 MPSC 3d 338**

§2. Jurisdiction and powers
A tariff approved by the Commission becomes law and has the same force and effect as a statute enacted by the General Assembly.
EC-2020-0252 **31 MPSC 3d 338**

§6. Weight, effect and sufficiency
In this case, the Commission afforded Mr. Scott every opportunity to be heard. Mr. Scott's participation in this complaint was minimal, but there is sufficient evidence of record for the Commission to decide this complaint on its merits.
WC-2020-0407 **31 MPSC 3d 299**

§8. Stipulation
Parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case,

and the Commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.
WA-2020-0397 **31 MPSC 3d 576**

§8. Stipulation
A nonunanimous stipulation and agreement is any stipulation and agreement entered into by fewer than all of the parties, but if no party objects to a nonunanimous stipulation and agreement within seven days of its filing with the Commission, then the Commission may treat it as a unanimous stipulation.
WA-2020-0397 **31 MPSC 3d 576**

§22. Parties
The Commission rejected a late-filed application to intervene as it did not meet the requirements of rule 20 CSR 4240-2.075(10) that late-filed motions to intervene include a showing of good cause. As the applying intervenor did not include a statement expressing good cause for the late-filing, the Commission could not grant the intervention.
GR-2021-0108 **31 MPSC 3d 088**

§22. Parties
Commission Rules 20 CSR 4240-2.110(2)(B) and 20 CSR 4240-2.116(3) together provide that the Commission may dismiss a party or a party's complaint for failure to appear at a hearing or any scheduled proceeding.
WC-2020-0407 **31 MPSC 3d 299**

§23. Notice and hearing
The parties agreed that the issue in this Complaint is limited to whether Grain Belt Express LLC is required to initiate easement negotiations by offering the form of easement agreement marked as Schedule DKL-4. They submitted

stipulated facts and agreed to submit this issue on their briefs. Thus, the parties agreed to waive a right to a hearing.
EC-2021-0034 **31 MPSC 3d 066**

§23. Notice and hearing
Since the City and the District filed a joint application stating that the parties agreed to the second amendment to the territorial agreement and no one has requested a hearing, no hearing is required.
WO-2021-0253 **31 MPSC 3d 174**

§23. Notice and hearing
The Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.
EO-2021-0339 **31 MPSC 3d 227**

§23. Notice and hearing
Since the city and the utility filed a joint application stating that the parties agreed to the territorial agreement and no one has requested a hearing, no hearing is required.
EO-2021-0388 **31 MPSC 3d 293**

§23. Notice and hearing
Since the application, along with conditions agreed upon by the parties, is unopposed, and no party has requested a hearing, no hearing need be held.
WM-2021-0412 **31 MPSC 3d 331**

§24. Procedures, evidence and proof
The Commission denied a request for additional documents submitted on December 1, 2020 as untimely when the established procedural schedule required requests for information to be submitted no later than June 22, 2020.
GC-2020-0201 **31 MPSC 3d 146**

§24. Procedures, evidence and proof
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.
GC-2021-0315 **31 MPSC 3d 211**

§24. Procedures, evidence and proof
A complaint alleging that a gas utility violated its tariff regarding the issuance of an operational flow order sufficiently stated a cause of action to bring the complaint within the jurisdiction of the Commission.
GC-2021-0315 **31 MPSC 3d 211**

§24. Procedures, evidence and proof
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.
GC-2021-0316 **31 MPSC 3d 215**

§24. Procedures, evidence and proof
A complaint alleging that a gas utility violated its tariff regarding the issuance of an operational flow order sufficiently stated a cause of action to bring the complaint within the jurisdiction of the Commission.
GC-2021-0316 **31 MPSC 3d 215**

§25. Pleadings and exhibits
The Commission denied a request for additional documents submitted on December 1, 2020 as untimely when the established procedural schedule required requests for information to be submitted no later than June 22, 2020.
GC-2020-0201 **31 MPSC 3d 146**

§25. Pleadings and exhibits
Commission Rules 20 CSR 4240-2.110(2)(B) and 20 CSR 4240-2.116(3) together provide that the Commission may dismiss a party or a party's complaint for failure to appear at a hearing or any scheduled proceeding.
WC-2020-0407 **31 MPSC 3d 299**

§26. Burden of proof
The complainant has the burden of proving that the utility violated a law under the Commission's authority, a Commission rule, an order of the Commission or its tariff.
WC-2020-0181 **31 MPSC 3d 180**

§29. Discovery
Spire Missouri, Inc. proposed that the Commission instruct parties other than Staff to defer submitting data requests until after Staff completed its Actual Cost Adjustment audit. The Commission did not restrict discovery citing Missouri Rule of Civil Procedure 56.01 – "All parties have discovery rights in a case that are only restricted by relevance and privilege."
GR-2021-0127 & GR-2021-0128 **31 MPSC 3d 001**

§30. Settlement procedures
Where an agreement was reached only by some of the parties and timely objection to approval of the agreement were made, the Commission must make its own findings on each issue necessary to address the application.
EU-2020-0350 **31 MPSC 3d 015**

§33. Defaults

The Commission's Staff argued that Complainant's complaint should be dismissed with prejudice pursuant to Missouri Rule of Civil Procedure 67.01. Staff argues that Complainant did not show up to his evidentiary hearing, which was essentially a continuation of his prior complaint that was dismissed for Complainant's failure to appear at a prehearing conference. The Commission was sympathetic to Staff's frustration and concern that Complainant may be wasting the Commission's resources and abusing the Commission's rules and procedures in an effort to avoid paying legitimate utility charges. However, Missouri Rule of Civil Procedure 67.01 is merely definitional and applies to Missouri courts and not the Commission.

WC-2020-0407 **31 MPSC 3d 299**

EXPENSE

EXPENSE

§16. Ascertainment of expenses generally

The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.

GR-2021-0108 **31 MPSC 3d 407**

§16. Ascertainment of expenses generally

The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction

costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§22. Reasonableness generally
The Commission found that without a proposal to replace its entire fleet of meters, the utility should replace meters on an as-needed basis and consistent with Commission meter testing sampling rules.
GR-2021-0108 **31 MPSC 3d 407**

§24. Test year and true up
The Commission found that the utility was using short-term debt to finance long-term assets because it converted several hundreds of millions of dollars of short-term debt to long-term debt eleven days before the close of the true-up period. This was the second instance of a large conversion of short-term debt close to the deadline of its rate case by this utility.
GR-2021-0108 **31 MPSC 3d 407**

§26. Accidents and damages
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§27. Additions and betterments
The Commission found that without a proposal to replace its entire fleet of meters, the utility should replace meters on an as-needed basis and consistent with Commission meter testing sampling rules.
GR-2021-0108 **31 MPSC 3d 407**

§33. Capital amortization
The Commission determined that a proposal for amortization of the general plant accounts was not appropriate as it would threaten the ability to perform a prudence review of plant added to these accounts because it failed to track retirement units and original costs.
GR-2021-0108 **31 MPSC 3d 407**

§33. Capital amortization
The Commission found that amortization rates over-recover as compared to weighted average values for depreciation rates.
GR-2021-0108 **31 MPSC 3d 407**

§35. Construction
The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.
GR-2021-0108 **31 MPSC 3d 407**

§35. Construction
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§35. Construction
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§37. Depreciation
The Commission found that amortization rates over-recover as compared to weighted average values for depreciation rates.
GR-2021-0108 **31 MPSC 3d 407**

§37. Depreciation
The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.
GR-2021-0108 **31 MPSC 3d 407**

§50. Insurance and surety premiums
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§67. Taxes
The Commission found it was proper for a Net Operating Loss (NOL) asset balance (which may include NOL Carryover (NOLC)) to be included as an offset to the Accumulated Deferred Income Tax (ADIT) Liability.
GR-2021-0108 **31 MPSC 3d 407**

§67. Taxes
The Commission distinguished the cash obtained by a utility through tax strategy to increase deductions and reduce taxable income as entirely different from the income tax costs included in rates intended to cover current tax payments based on the revenue requirement of a rate case. The law on the inclusion of the NOL asset balance is clear, and the Commission determined that the NOL asset balance should be included in rate base as an offset to Accumulated Deferred Income Tax (ADIT).
GR-2021-0108 **31 MPSC 3d 407**

§67. Taxes
The Commission determined that since a utility was not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the cash working capital (CWC) calculation was inappropriate. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission found that the appropriate expense lag days for income taxes within the CWC calculation was 365 days.
GR-2021-0108 **31 MPSC 3d 407**

GAS

GAS

§2. Obligation of the utility
Where the complainant failed to show that a gas utility disconnected his gas service between November 1 through March 31, and failed to show that the gas utility disconnected his gas service on any day when the National Weather Service morning forecast predicts a temperature drop below 32 degrees Fahrenheit in the next 24-hour period, the Commission found that there was no violation of the Cold Weather Rule under Commission Rule 20 CSR 4240-13.050.
GC-2020-0201 **31 MPSC 3d 146**

§2. Obligation of the utility
Where a customer service representative was required, and failed, to offer a form to a customer to help him demonstrate that he was experiencing a medical emergency, and where a supervisor subsequently arranged to send a medical emergency form by mail and electronic mail the same day, the Commission found that a lapse in offering the medical emergency form, when corrected the same day, did not support a finding that a violation of statute, Commission rule, or tariff had occurred.
GC-2020-0201 **31 MPSC 3d 146**

§3. Certificate of convenience and necessity
The Commission granted Spire Missouri Inc. a certificate of convenience and necessity to operate a natural gas distribution system in a residential subdivision in Buchanan County, Missouri as a further expansion of its existing certificated area.
GA-2021-0259 **31 MPSC 3d 394**

§13. Additions and betterments
The Commission found that without a proposal to replace its entire fleet of meters, the utility should replace meters on an as-needed basis and consistent with Commission meter testing sampling rules.
GR-2021-0108 **31 MPSC 3d 407**

§17.1. Purchased Gas Adjustment (PGA)
The Commission denied a motion to establish a procedural schedule filed by the Environmental Defense Fund, Midwest Energy Consumers Group, Consumers Council of Missouri, and the Office of the Public Counsel. That motion questioned the prudence of Spire East's affiliate transactions with Spire STL Pipeline.
GR-2021-0127 & GR-2021-0128 **31 MPSC 3d 001**

§17.1. Purchased Gas Adjustment (PGA)
The Commission determined that, because of the large number of factors that Staff needed to investigate prior to filing a report and recommendation, and because all parties and the Commission would benefit from having a Staff report and recommendation, the Commission would not establish a procedural schedule until after the submission of Staff's report and recommendation.
GR-2021-0127 & GR-2021-0128 **31 MPSC 3d 001**

§18. Rates
The Commission found that a Rate Normalization Adjustment Rider (RNA) as proposed would have allowed adjustments beyond the statutorily authorized adjustments for weather or conservation.
GR-2021-0108 **31 MPSC 3d 407**

§18. Rates
The Commission found that Section 386.266.3, RSMo

(Supp. 2020) limited authorized rate schedules to those due to variations in either weather, conservation, or both.
GR-2021-0108 **31 MPSC 3d 407**

§26. Restriction of service
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§29. Costs and expenses
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§42. Particular kinds of expenses generally
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction

costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§42. Particular kinds of expenses generally
The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.
GR-2021-0108 **31 MPSC 3d 407**

§43. Accidents and damages
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§44. Additions and betterments
The Commission found that without a proposal to replace its entire fleet of meters, the utility should replace meters on an as-needed basis and consistent with Commission meter testing sampling rules.
GR-2021-0108 **31 MPSC 3d 407**

§50. Capital amortization
The Commission determined that a proposal for amortization of the general plant accounts was not appropriate as it would threaten the ability to perform a prudence review of plant added to these accounts because it failed to track retirement units and original costs.
GR-2021-0108 **31 MPSC 3d 407**

§50. Capital amortization
The Commission found that amortization rates over-recover as compared to weighted average values for depreciation rates.
GR-2021-0108 **31 MPSC 3d 407**

§52. Construction
The Commission found the utility was not properly capitalizing overheads. The utility's cost elements, which it used to charge work orders, were lost by the time construction-work-in-process was unitized to the Federal Energy Regulatory Commission (FERC) plant accounts. Without those cost elements, the Commission could not find the record support for entries for overhead construction costs required by the Uniform System of Accounts (USOA) Gas Plant Instruction 4(C).
GR-2021-0108 **31 MPSC 3d 407**

§52. Construction
The Commission found the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(19) regarding eligibility requirements for training costs when the utility included generic training in construction accounts.
GR-2021-0108 **31 MPSC 3d 407**

§52. Construction
The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

§54. Depreciation
The Commission denied a request to shorten a previously

set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.
GR-2021-0108 **31 MPSC 3d 407**

§67. Insurance and surety premiums

The Commission found that the utility was not in compliance with the Uniform System of Accounts (USOA) Gas Plant Instruction 3(A)(3) regarding treatment of injuries and damages by posting losses to construction accounts and related insurance proceeds to expense accounts.
GR-2021-0108 **31 MPSC 3d 407**

MANUFACTURED HOUSING

MANUFACTURED HOUSING

§4. Jurisdiction and powers of the State Commission

The Commission found that a rulemaking was appropriate to increase fees charged by the Manufactured Housing Program to keep that program on an adequate financial footing.

MX-2022-0012 **31 MPSC 3d 262**

PUBLIC UTILITIES

PUBLIC UTILITIES

§1. Generally

The Commission established the assessment amount for fiscal year 2022.
AO-2021-0419 **31 MPSC 3d 233**

§7. Jurisdiction and powers of the State Commission

The Commission may grant a variance from or waive a requirement of Commission rules for good cause.
EA-2021-0167 **31 MPSC 3d 081**

§7. Jurisdiction and powers of the State Commission

The Commission found that good cause exists to waive the requirements to file reports pursuant to 20 CSR 4240-10.145, 20.105, 3.175, or 3.190, because the applicant for a certificate of convenience and necessity does not serve retail customers in Missouri.
EA-2021-0167 **31 MPSC 3d 081**

§7. Jurisdiction and powers of the State Commission

The Commission may allow an order to go into effect in fewer than 30 days for good cause if an application for a certificate of convenience and necessity is unopposed and the Commission does not wish to delay a project.
EA-2021-0167 **31 MPSC 3d 081**

§7. Jurisdiction and powers of the State Commission
The Commission found good cause existed for waiver of the Commission's 60-day prefiling notice rule, based on an applicant's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before the applicant filed its application.
EA-2021-0167 **31 MPSC 3d 081**

§7. Jurisdiction and powers of the State Commission
The Commission found good cause exists for waiver of the Commission's 60-day prefiling notice rule, based on MAWC's verified declaration that it had no communication with the Office of the Commission regarding substantive issues in the application within 150 days before MAWC filed its application.
SA-2021-0120 **31 MPSC 3d 219**

§7. Jurisdiction and powers of the State Commission
Commission Rule 20 CSR 4240-2.115(1) provides that the Commission may accept a stipulation and agreement as a resolution of all the issues.
EO-2021-0157 **31 MPSC 3d 238**

§7. Jurisdiction and powers of the State Commission
Where the Office of the Public Counsel did not join the agreement and did not file an objection within the period provided by the Commission's rule, the Commission may treat the agreement reached by Ameren Missouri and Staff as a unanimous agreement.
EO-2021-0157 **31 MPSC 3d 238**

RATES

I. JURISDICTION AND POWERS

II. REASONABLENESS-FACTORS AFFECTING REASONABLENESS

RATES

§20. Costs and expenses
The Commission approved a stipulation and agreement that provided a credit adjustment to the company's Energy Efficiency Investment Rate (EEIR) to refund certain costs related to promotional expenses.
EO-2021-0157 **31 MPSC 3d 238**

§106. Special charges; amount and computation
The Commission found that a Rate Normalization Adjustment Rider (RNA) as proposed would have allowed adjustments beyond the statutorily authorized adjustments for weather or conservation.
GR-2021-0108 **31 MPSC 3d 407**

§106. Special charges; amount and computation
The Commission found that Section 386.266.3, RSMo (Supp. 2020) limited authorized rate schedules to those due to variations in either weather, conservation, or both.
GR-2021-0108 **31 MPSC 3d 407**

§108. Gas
The Commission found that a Rate Normalization Adjustment Rider (RNA) as proposed would have allowed adjustments beyond the statutorily authorized adjustments for weather or conservation.
GR-2021-0108 **31 MPSC 3d 407**

§108. Gas
The Commission found that Section 386.266.3, RSMo (Supp. 2020) limited authorized rate schedules to those due to variations in either weather, conservation, or both.
GR-2021-0108 **31 MPSC 3d 407**

§108. Gas

The Commission has historically not allowed earnings based compensation to be recovered in rates because those incentives predominantly benefit shareholders and not ratepayers. Incentivizing employees to improve a utility's bottom line aligns the employee interests with the shareholders and not ratepayers.
GR-2021-0108 **31 MPSC 3d 407**

§118. Method of allocating costs

In allowing incentive compensation, the Commission noted that the monetary benefits for which the bonuses are paid are already included in the utility's cost of service.
GR-2021-0108 **31 MPSC 3d 407**

§120. Rate design, class cost of service for gas utilities

In allowing incentive compensation, the Commission noted that the monetary benefits for which the bonuses are paid are already included in the utility's cost of service.
GR-2021-0108 **31 MPSC 3d 407**

SECURITY ISSUES

SECURITY ISSUES

No headnotes in this volume involved the question of Security Issues.

SERVICE

SERVICE

§4. Abandonment, discontinuance and refusal of service

The Commission found that the programs put in place by the utilities to avoid disconnections during the pandemic should be allowed an opportunity to work and have been working.
AO-2021-0164 **31 MPSC 3d 008**

§4. Abandonment, discontinuance and refusal of service

The Commission found that an emergency rule placing a moratorium on disconnections could have the unintended consequence of causing financial distress on some municipalities.
AO-2021-0164 **31 MPSC 3d 008**

§4. Abandonment, discontinuance and refusal of service

The Commission found that a blanket moratorium for all

regulated water utilities, no matter their size, may be too broad.
AO-2021-0164 **31 MPSC 3d 008**

§4. Abandonment, discontinuance and refusal of service
The Commission found that the rulemaking requested by Consumers Council did not meet the criteria for the issuance of an emergency rule. The Commission found that an emergency rule imposing a temporary moratorium on residential disconnections for regulated electric, gas, and water service in the state of Missouri was not necessary to protect the public from an immediate danger and such emergency action not been 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. Therefore, the Commission denied the request to promulgate an emergency rule.
AO-2021-0164 **31 MPSC 3d 008**

§17. Duty to serve in general
Where the complainant failed to show that a gas utility disconnected his gas service between November 1 through March 31, and failed to show that the gas utility disconnected his gas service on any day when the National Weather Service morning forecast predicts a temperature drop below 32 degrees Fahrenheit in the next 24-hour period, the Commission found that there was no violation of the Cold Weather Rule under Commission Rule 20 CSR 4240-13.050.
GC-2020-0201 **31 MPSC 3d 146**

§21. Duty to serve as affected by charter, franchise or ordinance
Where a service customer representative was required, and failed, to offer a form to a customer to help him demonstrate

that he was experiencing a medical emergency, and where a supervisor subsequently arranged to send a medical emergency form by mail and electronic mail the same day, the Commission found that a lapse in offering the medical emergency form, when corrected the same day, did not support a finding that a violation of statute, Commission rule, or tariff had occurred.
GC-2020-0201 **31 MPSC 3d 146**

§31. Rules and regulations
The Commission found that the rulemaking requested by Consumers Council did not meet the criteria for the issuance of an emergency rule. The Commission found that an emergency rule imposing a temporary moratorium on residential disconnections for regulated electric, gas, and water service in the state of Missouri was not necessary to protect the public from an immediate danger and such emergency action not been 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. Therefore, the Commission denied the request to promulgate an emergency rule.
AO-2021-0164 **31 MPSC 3d 008**

§46. Connections, instruments and equipment in general
The Commission rejected an optional surge protection program proposed by the electric utility that would have required customers to deal with a third-party device manufacturer that the Commission does not regulate.
ET-2021-0082 **31 MPSC 3d 250**

SEWER

SEWER

§2. 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.
SA-2021-0074 **31 MPSC 3d 092**

§2. Certificate of convenience and necessity
The Commission may grant a sewer corporation a certificate of convenience and necessity after determining that such construction and operation are either "necessary or convenient for the public service.
SA-2021-0120 **31 MPSC 3d 219**

§2. 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.
SA-2022-0029 **31 MPSC 3d 317**

§4. Transfer, lease and sale
The Commission determined that the factors for granting a certificate of convenience and necessity to Elm Hills Utility Operating Company, Inc. were satisfied and that it was in the public interest for Elm Hills to provide wastewater treatment service to residential lots adjacent to Elm Hills' State Park Village service area in Johnson County Missouri.
SA-2022-0014 **31 MPSC 3d 325**

§7. Jurisdiction and Powers of the State Commission

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

SA-2021-0120 **31 MPSC 3d 219**

§8. Jurisdiction and powers of local authorities

The Boone County Regional Sewer District's regulations do not prohibit private ownership and operation of the Hallsville sewer system by Missouri-American Water Company and posed no legal barrier to consideration of Missouri-American Water Company's application.

SA-2021-0017 **31 MPSC 3d 513**

STEAM

STEAM

No headnotes in this volume involved the question of Steam.

TELECOMMUNICATIONS

TELECOMMUNICATIONS

No headnotes in this volume involved the question of Telecommunications.

VALUATION

VALUATION

§63. Expenses and revenues

The Commission determined that since a utility was not remitting any income taxes to the IRS on a quarterly basis, using a 38-day income tax expense lag in the cash working

capital (CWC) calculation was inappropriate. The fact that no income tax payments have been made in the test year or true-up period justifies the use of a 365-day expense lag. Therefore, the Commission found that the appropriate expense lag days for income taxes within the CWC calculation was 365 days.
GR-2021-0108 **31 MPSC 3d 407**

§68. Depreciation generally
The Commission found that amortization rates over-recover as compared to weighted average values for depreciation rates.
GR-2021-0108 **31 MPSC 3d 407**

§68. Depreciation generally
The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.
GR-2021-0108 **31 MPSC 3d 407**

§70. Factors affecting propriety thereof
The Commission found that amortization rates over-recover as compared to weighted average values for depreciation rates.
GR-2021-0108 **31 MPSC 3d 407**

§70. Factors affecting propriety thereof
The Commission denied a request to shorten a previously set 15-year service life when the asset, of approximately 9 years of age, has not yet reached the 15-year threshold.
GR-2021-0108 **31 MPSC 3d 407**

WATER

WATER

§2. 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.
WA-2021-0116 **31 MPSC 3d 104**

§2. 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.
WA-2021-0391 **31 MPSC 3d 385**

§2. 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.
WA-2022-0049 **31 MPSC 3d 567**

§2. 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.
WA-2020-0397 **31 MPSC 3d 576**

§4. Transfer, lease and sale
The Commission may approve a merger of water corporations if the merger is not detrimental to the public interest.
WM-2021-0412 **31 MPSC 3d 331**

§4. Transfer, lease and sale
The Commission will deny an asset transfer application only if approval would be detrimental to the public interest.
WA-2020-0397 **31 MPSC 3d 576**

§8. Jurisdiction and Powers of the State Commission
The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto. Thus, it has no authority to enter a money judgment. But it may order adjustments for an overcharge.
WC-2020-0181 **31 MPSC 3d 180**

§11. Territorial Agreements
The Commission has jurisdiction over territorial agreements for the sale and distribution of water under Section 247.172, RSMo. The Commission may approve a territorial agreement if the Commission determines that the territorial agreement is not detrimental to the public interest.
WO-2021-0253 **31 MPSC 3d 174**

§11. Territorial Agreements
Territorial agreements must be in writing pursuant to Section 247.172, RSMo (2016). Under the same statute, approvals

of territorial agreements must be in the form of a Report and Order. The statute also provides that territorial agreements must not be detrimental to the public interest.
WO-2021-0254 **31 MPSC 3d 205**

§19. Service
Mr. Scott said that his meter was defective and needed to be replaced. The request to replace a potentially defective meter implies a meter test. A meter check does not require removal or replacement of the meter as a meter test does. The Commission found that Mr. Scott's request was for a meter test and not a meter check. Missouri American Water Company's interpretation of its tariff was not made in bad faith, but is nevertheless inaccurate. MAWC should consider what a customer's request involves, and not whether a particular word was used in the request.
WC-2020-0407 **31 MPSC 3d 299**

§24. Valuation
Section 393.320.5(1), RSMo, states, in part, that the lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility.
WA-2022-0049 **31 MPSC 3d 567**

§31. Billing practices
Complainant failed to prove his allegation that Missouri-American Water Company overbilled him for water usage by estimating his bills, failed to post payments to his account, failed to apply credits to his account, and failed to replace his meter on request.
WC-2020-0407 **31 MPSC 3d 299**