REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF

THE STATE OF MISSOURI

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Volume 27 MPSC 3d

January 1, 2017 – December 31, 2017

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Morris Woodruff

Reporter of Opinions

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JEFFERSON CITY, MISSOURI

(2019)

PREFACE

This volume of the *Reports of the Public Service Commission of the State of Missouri* contains selected Reports and Orders issued by this Commission during the period beginning January 1, 2017 through December 31, 2017. It is published pursuant to the provisions of Section 386.170, et seq., Revised Statutes of Missouri, 2016, as amended.

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

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

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of the City of	)	
Harrisonville, Missouri and KCP&L Greater	)	
Missouri Operations Company for Approval	)	**File No. EO-2017-0138**
Of a Territorial Agreement	)	

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Electric

§9. Jurisdiction and powers of the State Commission

Sections 394.312 and 416.041, RSMo, give the Commission jurisdiction over territorial agreements between electric utilities and municipally owned electric utilities.

Evidence, Practice & Procedure

§23. Notice and hearing

The Commission must hold an evidentiary hearing to determine if a territorial agreement should be approved, except when the matter is resolved by a stipulation and agreement and all parties agree to waive their right to a hearing. Even though no formal agreement to waive the hearing was submitted, the Commission need not hold a hearing since the opportunity for a hearing was provided and no party requested an opportunity to present evidence.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of January, 2017.

In the Matter of the Application of the City of Harrisonville, Missouri and KCP&L Greater Missouri Operations Company for Approval Of a Territorial Agreement	))))	**File No. EO-2017-0138**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: January 4, 2017 Effective Date: January 14, 2017

I. Procedural History

On November 7, 2016, the City of Harrisonville, Missouri ("City") and KCP&L Greater Missouri Operations Company ("GMO"), (collectively, "Joint Applicants") filed an application asking the Commission to approve a territorial agreement ("the Agreement") pursuant to Sections 416.041 and 394.312, RSMo. The Commission issued notice of the application and set an intervention deadline. There were no requests to intervene.

The Staff of the Commission filed its recommendation on December 6, 2016. Staff states that the Agreement will authorize GMO to provide electric service to approximately 35 acres within City. A new industry is to be built on this site. GMO already has facilities closer to the site than the City does. GMO and City agree that allowing GMO to serve that site is the most economical and practical option because of GMO's existing facilities. Staff states that the Agreement is not detrimental to the public interest. Thus, the Staff recommends Commission approval.

II. Findings of Fact

1. City is a municipally owned electric utility, authorized to provide electric service to customers that lie primarily within the city limits of the City of Harrisonville.

2. GMO is an electrical corporation and a utility regulated by the Commission.

3. On or about October 3, 2016, GMO and City entered into a territorial agreement. The agreement would allow GMO to provide service to a new industry to be operated on a 35-acre site within the city limits of Harrisonville, Missouri, and within City's exclusive service area.

4. GMO's facilities are closer than City's facilities to the new industry site.

5. Allowing GMO to serve the new industry site is both economical and practical.

6. No other customer of City or GMO will be impacted by the changes in the Amendment.

III. Conclusions of Law

Sections 394.312 and 416.041, RSMo, give the Commission jurisdiction over territorial agreements between electric utilities and municipally owned electric utilities. Section 394.312.5 requires the Commission to hold an evidentiary hearing to determine if a territorial agreement should be approved, except when the matter is resolved by a stipulation and agreement and all parties agree to waive their right to a hearing. All parties to this matter are in agreement that the Commission should approve the Agreement. Even though no formal agreement to waive the hearing was submitted, the Commission need not hold a hearing since the opportunity for a hearing was provided and no party requested an opportunity to present evidence.[1]

[1] *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Com'n of State of Mo.*, 776 S.W.2d 494 (Mo. App.W.D. 1989).

IV. Decision

Having considered the joint application and Staff's verified recommendation in support of approval of the application, the Commission finds that there are no facts in dispute and, therefore, accepts the facts as true. The Commission concludes that the Agreement is not detrimental to the public interest and should be approved.

THE COMMISSION ORDERS THAT:

1. The *Joint Application for Approval of a Territorial Agreement* between KCP&L Greater Missouri Operations Company and the City of Harrisonville, Missouri is approved.

2. This order shall become effective on January 14, 2017.

3. This file shall be closed on January 15, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory	) **File No. GO-2016-0332**) Tariff No. YG-2017-0048)
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory	) **File No. GO-2016-0333**) Tariff No. YG-2017-0047)

REPORT AND ORDER

Reversed and remanded: *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory,* 539 S.W.3d 835 (Mo App. W.D. 2017)

Evidence, Practice and Procedure

§3. Judicial notice; matters outside the record

The Commission determined that the Office of the Public Counsel's motion to strike portions of the Company's brief containing citations and excerpts of arguments from other Commission cases on appeal to the Western District Court of Appeals and the Missouri Supreme Court was moot because the Commission could have taken administrative notice of the records and the Commission did not rely on those arguments in making its decision.

§23. Notice and hearing

The Commission denied Laclede Gas Company's motion to dismiss or, in the alternative, to strike issues raised in the Office of the Public Counsel's pleading filed on the 70th day after the petition for a change in the infrastructure system replacement surcharge (ISRS) had been filed because Section 393.1015.1.(1), RSMo (Supp. 2012), did not expressly require Public Counsel's filing within a certain timeframe.

§23. Notice and hearing

It is within the Commission's discretion to hold a hearing in ISRS petitions.

§24. Procedures, evidence and proof

Even though the procedural schedule was abbreviated, a full hearing was held and due process was served.

Expense

§79. Infrastructure system replacement surcharge (ISRS) eligible expense
The Commission found that because plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe, it was an infrastructure system replacement surcharge (ISRS) eligible expense. The Commission found that the plastic pipe was distinguishable from the costs of telemetry because telemetry was a discrete expense added for the convenience of the company.

§79. Infrastructure system replacement surcharge (ISRS) eligible expense
The Commission found that because plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe it was an infrastructure system replacement surcharge (ISRS) eligible expense.

§79. Infrastructure system replacement surcharge (ISRS) eligible expense
The Commission found that hydrostatic testing was not an infrastructure system replacement surcharge (ISRS) eligible expense because it did not meet the definition of gas utility plant project in section 393.1009(3), RSMo (Supp. 2012).

Rates

§81. Surcharges
The Commission found that because plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe, the cost of replacing it could be recovered in the infrastructure system replacement surcharge (ISRS).

§81. Surcharges
The Commission's decision to allow the costs of plastic pipe as part of the infrastructure system replacement surcharge (ISRS) was distinguished from the earlier Commission decision to disallow telemetry expenses as part of the ISRS because the telemetry expenses were distinct additions to ISRS-eligible projects and were included as a matter of convenience, while the plastic pipe was an integral part of the replacement of cast iron and steel pipe that was worn out or in a deteriorated condition.

§81. Surcharges
The Commission rejected the tariff sheet filed by Laclede Gas Company to change its infrastructure replacement surcharge (ISRS), but authorized the company to file new tariff sheets to adjust the ISRS in compliance with the Commission's order.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory	))))	**File No. GO-2016-0332** Tariff No. YG-2017-0048
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory	))))	**File No. GO-2016-0333** Tariff No. YG-2017-0047

REPORT AND ORDER

Issue Date: January 18, 2017

Effective Date: January 28, 2017

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory	))))	**File No. GO-2016-0332** Tariff No. YG-2017-0048
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory	))))	**File No. GO-2016-0333** Tariff No. YG-2017-0047

APPEARANCES

Appearing for **LACLEDE GAS COMPANY AND MISSOURI GAS ENERGY**:

Michael C. Pendergast and **Rick Zucker**, Laclede Gas Company, 700 Market Street, 6th Floor, St. Louis, Missouri 63101.

Appearing for **OFFICE OF THE PUBLIC COUNSEL:**

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Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**:

Kevin A. Thompson, Chief Staff Counsel, and **Marcella Forck**, Legal Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On September 30, 2016, Laclede Gas Company filed applications and petitions to change its infrastructure system replacement surcharges (ISRS) in its Missouri Gas Energy (MGE) and Laclede Gas Service (Laclede) territories.[1] MGE requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016, through August 31, 2016, with pro forma ISRS costs updated through October 31, 2016. Laclede also requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016, through August 31, 2016, with pro forma ISRS costs updated through October 31, 2016. Laclede Gas Company provided Staff and Public Counsel updated actual cost information for the pro forma figures throughout Staff's audit on various dates from October 10 through November 21, 2016.

The Commission issued notice of the applications and provided an opportunity for interested persons to intervene, but no intervention requests were submitted in either case. The Commission also suspended the filed tariff sheets until January 28, 2017.

On November 29, 2016, the Staff of the Missouri Public Service Commission (Staff) filed its report recommending a $72 correction to MGE's proposal due to a journal entry error and a $7,489 correction to Laclede's proposal due to a difference in

[1] Laclede Exhibit 5, *Verified Application and Petition of Missouri Gas Energy, an Operating Unit of Laclede Gas Company, to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*, filed Sept. 30, 2016, File No. GO-2016-0332; and Laclede Exhibit 4, *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, filed Sept. 30, 2016, File No. GO-2016-0333. (While these cases were not consolidated, they were heard simultaneously, and this Report & Order addresses both applications.)

the time periods recorded for accumulated depreciation and deferred taxes.[2] Staff recommended that the Commission reject the original tariff sheets and approve ISRS adjustments for MGE and Laclede based on Staff's determination of the appropriate amount of ISRS revenues.

On December 9, 2016, Laclede Gas Company filed a response accepting Staff's recommendation and attaching specimen tariffs. Also on December 9, 2016, the Office of the Public Counsel (Public Counsel or OPC) filed a motion in each case requesting that the Commission reject the proposed ISRS increase or, alternatively, schedule an evidentiary hearing.[3] A joint procedural schedule was set and written testimony was filed.

On December 19, 2016, Laclede Gas Company filed its *Response of Laclede Gas Company in Opposition to OPC's December 9 Motion, or in the Alternative, Motion to Strike Certain Issues* (December 19 Motion). Responses to the December 19 Motion were received and oral arguments were heard prior to the joint evidentiary hearing in these cases on January 3, 2017.

The parties also filed an issues list and statements of position prior to the hearing. The issues list contained five issues including Laclede Gas Company's motion to dismiss. On January 2, 2017, Public Counsel dismissed two of the five issues.

Post-hearing briefs were filed on January 6, 2017. On January 10, 2017, Public Counsel filed a *Motion to Strike Portions of Laclede's Brief or, in the Alternate, Allow OPC to Respond*. On January 16, 2017, Laclede and MGE filed *Laclede and MGE's*

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[2] *Staff Recommendation*, filed Nov. 29, 2016, File No. GO-2016-0332; and *Staff Recommendation*, filed Nov. 29, 2016, File No. GO-2016-0333.

[3] *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing*, File Nos. GO-2016-0332 and GO-2016-0333 (filed Dec. 9, 2016).

Motion to Strike and Response to OPC's Motion to Strike. In response, Public Counsel filed the *OPC Response Regarding Motions to Strike* on January 17, 2017.

II. Outstanding Motions

Public Counsel's Motion to Strike

Public Counsel filed a motion to strike portions of Laclede's brief containing citations and excerpts of arguments during other Commission cases on appeal to the Western District Court of Appeals and the Missouri Supreme Court. Public Counsel is correct that these arguments were not specifically included in the evidence of record. Allegations were raised, however, regarding inconsistency with past positions. In fact, the record is replete with discussion of reversal of position by witnesses, individually, and the parties. Additionally, the record on appeal that Laclede references is in the Commission's Electronic and Information Filing System (EFIS) and the Commission could have taken administrative notice of those records. However, the Commission does not find these arguments to be relevant to this decision and did not rely on them in making this determination. Therefore, no prejudice resulted from these arguments and the Commission will deny Public Counsel's motion to strike as moot. Public Counsel's alternative request, to be allowed to respond, will be granted and has been accomplished with Public Counsel's motion to strike.

Laclede's Motion to Strike

With regard to Laclede's motion to strike filed on January 16, 2017, the Commission disagrees with Laclede that "the matter of capitalization versus expense should be stricken from the parties' briefs." The testimony of Mr. Hyneman that Laclede

cites as being particularly offensive was given without objection, so the issue has been raised and is appropriate for briefing. Therefore, Laclede's motion to strike is denied.

Laclede's Motion to Dismiss

On December 19, 2016, Laclede Gas Company filed its pleading asking the Commission to dismiss this action and effectively deny Public Counsel's request for a hearing for several reasons. Laclede Gas Company asked that, alternatively, the issues of updating and incentive compensation be stricken. Public Counsel later dismissed the updating and incentive compensation issues, so that request is moot.

First, Laclede Gas Company argues that Public Counsel was in defiance of the Commission's November 30, 2016, procedural order by raising new issues on the 70th day after the petitions had been filed, which was December 9, 2016. A review of that procedural order shows that the Commission did not direct Public Counsel to file a response to Staff's Recommendation. Rather the Commission ordered that, "Any other party wishing to respond or object to Staff's recommendation shall do so no later than December 9, 2016."[4] The Commission set no deadline for the filing of objections to the tariff sheets or requests for hearing. Thus, Public Counsel was in compliance with the Commission's procedural order.

Second, Laclede Gas Company argued that Public Counsel should have raised these new issues within the 60-day statutory deadline that Staff is required to follow.[5] Even though the statute does not set out deadlines for Public Counsel, or any other party or entity other than Staff and the Commission, the statute clearly contemplates

[4] *Order Establishing Time to Respond to Staff's Recommendation*, File Nos. GO-2016-0332 and GO-2016-0333 (issued Nov. 30, 2016).
[5] Section 393.1015.2.(1), RSMo (Supp. 2012).

that Public Counsel will be involved in ISRS proceedings since it is required to receive notice of the filings when they are made.[6] Also, pursuant to Commission Rule 4 CSR 240-2.010(10), absent a filed notice of intent not to participate, Public Counsel is automatically a party to any case before the Commission. If the legislature had intended to mandate a deadline for the Public Counsel's filings, it would have done so in the statute.

Further, although the Commission must complete its order within 120 days of the petition being filed, it is within the Commission's discretion as to whether it holds a hearing in ISRS petitions.[7] In the current case, the Commission received Public Counsel's objections and determined that there was sufficient time to hold a hearing. A procedural schedule was set and the parties had an opportunity to conduct discovery, file written direct and rebuttal testimony, file an issues list and position statements, have a full opportunity for cross-examination at the evidentiary hearing, and file briefs. Thus, even though the procedural schedule was abbreviated and accommodations had to be made due to holidays, a full hearing was held and due process was served. Therefore, the Commission denies Laclede Gas Company's December 19 motion.

III. Findings of Fact

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

[6] Section 393.1015.1.(1), RSMo (Supp. 2012).
[7] Section 393.1015.2.(3), RSMo (Supp. 2012). ("The commission *may* hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed." (Emphasis added)).

1. Laclede is a public utility and gas corporation incorporated under the laws of the state of Missouri. Laclede distributes and transports natural gas to customers in the City of St. Louis and the counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler.[8]

2. MGE is an operating unit of Laclede Gas Company that conducts business in Laclede Gas Company's MGE service territory under the fictitious name of Missouri Gas Energy. MGE is engaged in the business of distributing and transporting natural gas to approximately 500,000 customers in the western Missouri counties of: Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, DeKalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Newton, Pettis, Platte, Ray, Saline, Stone, and Vernon.[9]

3. An ISRS is a statutorily authorized rate adjustment mechanism tool utilized by eligible gas corporations to recover the cost of certain infrastructure replacements by establishing and updating a surcharge on a customer's bill.[10] A qualifying gas corporation files an ISRS petition with the Commission seeking authority to recover the depreciation expense and return associated with eligible net plant additions, as well as amounts associated with property taxes for those additions.[11]

4. Once an ISRS is established, a gas corporation can submit to the Commission a proposed rate schedule changing the ISRS to recover the expense of infrastructure system replacements outside of a formal rate case. The cumulative

[8] Laclede Exhibit 4; p. 2, ¶ 3-4.
[9] Laclede Exhibit 5; p. 2, ¶ 4-5.
[10] Staff Exhibit 6, *Rebuttal Testimony of Mark Oligschlaeger*, p. 3, lns. 7-12.
[11] Staff Exhibit 6, p. 3, lns. 13-15.

revenue requirement for all Commission-approved ISRS updates is then placed on customers' bills before being zeroed out at the next general rate case.

5. Staff performs an ISRS audit when a petition to change an ISRS is filed.[12] By statute, Staff may file a report of its audit within 60 days from the time an ISRS petition is filed.[13]

6. In contrast to the type of audit performed in a general rate case, an ISRS audit is limited in scope to a determination of whether the included projects are ISRS-eligible and whether the calculations were done correctly. While costs of an ISRS project may be included in rates, those costs are still subject to a prudence review in a subsequent rate case. If the costs are found to be imprudent, the amount of ISRS funds collected for the project can be refunded to customers.[14]

A. Laclede

7. The Commission approved Laclede's ISRS to go into effect on April 12, 2014, in File No. GO-2014-0212. Laclede's most recent general rate increase was approved by the Commission in File No. GR-2013-0171. Laclede has routinely sought approval to revise its ISRS to include the costs of additional infrastructure system replacements since its last general rate case. The Commission has approved five petitions to change Laclede's ISRS, with the last order approving a change to the ISRS being in File No. GO-2016-0196.[15] The cumulative Commission-approved ISRS amounts are included in Laclede's current ISRS rates.[16]

[12] Staff Exhibit 3, *Direct Testimony of David Sommerer,* Schedule DMS-d2.
[13] Section 393.1015.2(2), RSMo (Supp. 2012).
[14] Sections 393.1009 and 393.1015, RSMo (Supp. 2012).
[15] Staff Exhibit 2, *Direct Testimony of Jennifer K. Grisham,* Schedule JKG-d1, p. 4.
[16] Staff Exhibit 2, Schedule JKG-d1, pp. 4-5.

8. On September 30, 2016, Laclede filed a petition seeking to recover costs for claimed ISRS eligible projects from March 1, 2016 updated through October 31, 2016.[17]

9. Laclede attached to its petition supporting documentation for the plant additions completed since the last approved ISRS change.[18] This included documentation identifying the type of addition, utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.[19] The company also provided estimates of capital expenditures for projects completed through October 2016.[20]

10. Laclede provided Staff and Public Counsel updated actual cost information for the pro forma figures on October 19 and November 1, 16, 17, and 21, 2016.[21]

11. As part of its audit, Staff reviewed workpapers, a representative sample of work orders, invoices, and other applicable documentation.[22] Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.[23] Laclede provided all work order authorizations for work orders over $50,000.[24]

12. After performing its audit, Staff filed a recommendation that the Commission approve Laclede's petition for ISRS plant additions from March 1, 2016,

[17] Staff Exhibit 2, Schedule JKG-d1, pp. 4-5; and Laclede Exhibit 4, p. 2.
[18] Laclede Exhibit 4.
[19] Laclede Exhibit 4, Appendix A and B.
[20] Laclede Exhibit 4.
[21] Staff Exhibit 2, Schedule JKG-d1, p. 4.
[22] Staff Exhibit 2, Schedule JKG-d1, p. 3.
[23] Staff Exhibit 2, Schedule JKG-d1, p. 3.
[24] Laclede Exhibit 2, *Rebuttal Testimony of Glenn W. Buck*, p. 10, lns. 5-10.

through October 31, 2016.[25] Staff recommended the Commission approve the inclusion of accumulated depreciation and deferred taxes through December 15, 2016.[26]

13. Based on its review and calculations, Staff recommended that Laclede receive an additional $4,504,138 in ISRS revenues.[27] This was a different amount than the ISRS-related revenue increase Laclede requested due to Staff recording accumulated depreciation and deferred taxes through December 15, 2016, instead of December 1, 2016, as Laclede had done.[28]

14. Staff's recommended cumulative amount to be included in ISRS rates was $29,526,894.[29] Staff also submitted a proposed ISRS rate design, which is consistent with the methodology used to establish Laclede's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.[30]

15. Laclede concurred with and supported Staff's figures.[31]

16. No party disagreed, and the Commission finds, that all the utility plant additions submitted for ISRS classification were in service and used and useful before Staff filed its Recommendation on November 29, 2016.[32]

17. Additionally, it is undisputed that all of Laclede's replaced cast iron mains were worn out or deteriorated due to their age.[33]

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[25] Laclede Exhibit 1, *Direct Testimony of Glenn W. Buck*, Schedule GWB-1; and Staff Exhibit 2, Schedule JKG-d1.
[26] Staff Exhibit 2, Schedule JKG-d1, p. 4.
[27] Staff Exhibit 2, Schedule JKG-d1, p. 4.
[28] Staff Exhibit 2, Schedule JKG-d1, p. 4.
[29] Staff Exhibit 2, Schedule JKG-d1, p. 5.
[30] Staff Exhibit 2, Schedule JKG-d1, pp. 5 and 8.
[31] Laclede Exhibit 1, p. 3, lns. 20-22.
[32] Laclede Exhibit 2, p. 3, lns. 6-13.
[33] Transcript p. 149, lns. 15-18.

18. Public Counsel did object, however, to certain portions of plastic mains and service lines that were replaced, claiming that those were not worn out or deteriorated under the requirements of the ISRS statute.[34]

19. Laclede determined it needed to replace, along with certain pieces of cast iron and bare steel pipe, the pieces of plastic pipe that had been used as patches to the cast iron pipe and to relocate the mains in easier to access areas.[35] The patches of plastic pipe varied from just a few feet to several hundred feet in length.[36]

20. The plastic pipe that was replaced also varied in age, with some being installed in the 1970s, 1980s, 1990s, 2000s, and 2010s.[37]

21. Laclede considered that the patches of plastic pipe and the plastic service lines were part of a larger system of pipeline and replaced entire neighborhoods of mains and service lines by running new plastic lines.[38] These lines were generally in new locations between the street and the sidewalks for easier access, were buried at a different depth, and required that service lines connect to the main line and enter the customers' buildings in different locations than the old lines.[39]

22. Because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.[40] In this

[34] File No. GO-2016-0333, Item No. 7, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).
[35] Laclede Exhibit 2, p. 11, ln. 20; and Laclede Exhibit 3, p. 10, lns. 8-10.
[36] Laclede Exhibit 3, *Rebuttal Testimony of Mark D. Lauber,* p. 9, lns. 17-18.
[37] OPC Exhibit 1, *Direct Testimony of Charles Hyneman*, Schedules CRH-D-2 and CRH-D-3; and OPC Exhibit 2.
[38] Tr. p. 128, lns. 14-23; and p. 132, lns. 12-22.
[39] Tr. pp. 140-142; and Laclede Exhibit 3, p. 10, lns. 1-13.
[40] Laclede Exhibit 3, pp. 10-11.

particular situation, the mains could not be replaced without replacing the service lines.[41]

23. Additionally, replacing the plastic pipe was an essential and indispensable step in completing the cast iron and steel main replacement projects.[42]

24. A majority of the pipeline replaced was cast iron and bare steel pipe.[43] Further, more cast iron and plastic in total was removed than new plastic put in place, due to efficiencies in the new placement and type of pipelines.[44]

25. By retiring the newer plastic patches, Laclede reduces the depreciation expenses related to that plastic pipe and customers receive a reduction in ISRS rates accordingly.[45]

B. MGE

26. The Commission approved MGE's current ISRS to go into effect on October 8, 2014.[46] MGE's most recent general rate increase was approved by the Commission in File No. GR-2014-0007. Since then, MGE has routinely sought approval to revise its ISRS to include the costs of additional infrastructure system replacements. The Commission has approved three petitions to change MGE's ISRS since the last general rate case, with the latest order approving a change to the ISRS being in File No. GO-2016-0197.[47] The cumulative Commission-approved ISRS amounts are included in MGE's current ISRS rates.[48]

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[41] Tr. p. 141, lns. 12-14; and Laclede Exhibit 3, p. 11, lns. 11-13.
[42] Laclede Exhibit 3, p. 9, lns. 8-10.
[43] Tr. p. 128, lns. 6-9; and Staff Exhibit 5, *Rebuttal Testimony of Kimberly K. Bolin*, pp. 3-4.
[44] Laclede Exhibit 3, p. 8, lns. 16-19; and p. 11, lns. 17-19; and Staff Exhibit 5, p, 3, lns. 11 and 21; and p. 7.
[45] Laclede Exhibit 2, p. 11, lns. 3-14, and Revised Rebuttal Schedule GWB-2.
[46] The Commission approved Laclede's ISRS in File No. GR-2015-0025.
[47] Staff Exhibit 1, *Direct Testimony of Caroline Newkirk*, Schedule CNN-d1, p. 4.
[48] Staff Exhibit 1, Schedule CNN-d1, p. 4.

27. On September 30, 2016, MGE filed a petition seeking to recover costs for claimed ISRS eligible projects from March 1, 2016, updated through October 31, 2016.[49]

28. MGE attached to its petition supporting documentation identifying the type of addition, the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.[50] MGE also provided estimates of capital expenditures for projects completed through October 2016.[51]

29. MGE provided Staff and Public Counsel updated actual cost information for the pro forma figures throughout the Staff audit process including on October 10 and November 10, 18, and 21, 2016.[52]

30. As part of its audit, Staff reviewed workpapers, a representative sample of work orders, invoices, and other applicable documentation.[53] Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.[54] MGE provided all work order authorizations for work orders over $50,000.[55]

31. After performing its audit, Staff filed a recommendation that the Commission approve MGE's petition for ISRS plant additions from March 1, 2016, through October 31, 2016.[56] Staff recommended the Commission approve the inclusion of accumulated depreciation and deferred taxes through December 15, 2016.[57]

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[49] Staff Exhibit 1, Schedule CNN-d1, pp. 4-5; and Laclede Exhibit 5, p. 2.
[50] Laclede Exhibit 5, Appendix A and B.
[51] Laclede Exhibit 5.
[52] Staff Exhibit 2, Schedule CNN-d1, p. 3.
[53] Staff Exhibit 1, Schedule CNN-d1, p. 3.
[54] Staff Exhibit 1, Schedule CNN-d1, p. 3.
[55] Laclede Exhibit 2, p. 10, lns. 5-10.
[56] Laclede Exhibit 1, Schedule GWB-1; and Staff Exhibit 1, Schedule CNN-d1.
[57] Staff Exhibit 1, Schedule CNN-d1, p. 4.

32. Based on its review and calculations, Staff recommended that MGE receive an additional $3,362,598 in ISRS revenues.[58] This figure includes the correction of a $72 disposition error in MGE's workpapers.[59] Additionally, Staff recommended the ISRS-related revenue increase of MGE include accumulated depreciation and deferred taxes through December 15, 2016.[60]

33. Staff's recommended cumulative amount to be included in ISRS rates is $13,616,021.[61] Staff also submitted a proposed rate schedule, which is consistent with the methodology used to establish MGE's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.[62]

34. MGE concurred with and supported Staff's figures.[63]

35. No party disagreed, and the Commission finds, that all the utility plant additions submitted for ISRS classification were in service and used and useful before Staff filed its Recommendation on November 29, 2016.[64]

36. Additionally, it is undisputed that all of MGE's replaced cast iron and bare steel mains were considered to be worn out or deteriorated due to their age.[65]

37. Public Counsel did object, however, to certain portions of plastic mains and service lines that were replaced, claiming that those were not worn out or deteriorated under the requirements of the ISRS statute.[66] Additionally, Public Counsel

[58] Staff Exhibit 1, Schedule CNN-d1, p. 4.
[59] Staff Exhibit 1, Schedule CNN-d1, p. 4.
[60] Staff Exhibit 1, Schedule CNN-d1, p. 3.
[61] Staff Exhibit 1, Schedule CNN-d1, p. 5.
[62] Staff Exhibit 1, Schedule CNN-d1, p. 4.
[63] Laclede Exhibit 1, p. 3, lns. 20-22.
[64] Laclede Exhibit 2, p. 3, lns. 6-13.
[65] Tr. p. 149, lns. 15-18.
[66] File No. GO-2016-0332, Item No. 8, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).

objected to certain hydrostatic testing costs as not eligible to be included in MGE's ISRS change request.[67]

38. The company determined it needed to replace, along with certain pieces of cast iron and bare steel pipe, the pieces of plastic pipe that had been used as patches to the cast iron pipe and to relocate the mains in easier to access areas.[68] The patches of plastic pipe varied in length from just a few feet to several hundred feet in length.[69]

39. The plastic pipe that was replaced also varied in age, with some being installed in the 1970s, 1980s, 1990s, 2000s, and 2010s.[70]

40. MGE considered that the patches of plastic pipe and the plastic service lines were part of a larger system of pipeline and replaced entire neighborhoods of mains and service lines by running new plastic lines.[71] These lines were generally in new locations between the street and the sidewalks for easier access, were buried at a different depth, and required that service lines connect to the main line and enter the customers' buildings in different locations than the old lines.[72]

41. Because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.[73] In this particular situation the mains could not be replaced without replacing the service lines.[74]

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[67] File No. GO-2016-0332, Item No. 8, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).
[68] Laclede Exhibit 2, p. 11, lns. 20; and Laclede Exhibit 3, p. 10, lns. 8-10.
[69] Laclede Exhibit 3, p. 9, lns. 17-18.
[70] OPC Exhibit 1, Schedules CRH-D-2 and CRH-D-3; and OPC Exhibit 2.
[71] Tr. p. 128, lns. 14-23; and p. 132, lns. 12-22.
[72] Tr. pp. 140-142; and Laclede Exhibit 3, p. 10, lns. 1-13.
[73] Laclede Exhibit 3, pp. 10-11.
[74] Tr. p. 141, lns. 12-14; and Laclede Exhibit 3, p. 11, lns. 11-13.

42. Additionally, replacing the plastic pipe was an essential and indispensable step in completing the cast iron and steel main replacement projects.[75]

43. A majority of the pipeline replaced was cast iron and bare steel pipe.[76] Further, more cast iron and plastic in total was removed than new plastic put in place, due to efficiencies in the new placement and type of pipelines.[77]

44. By retiring the newer plastic patches, MGE reduces the depreciation expenses related to that plastic pipe and customers receive a reduction in ISRS rates accordingly.[78]

45. Hydrostatic testing is performed for several reasons.[79]

46. Hydrostatic testing is performed on newly installed pipelines to check for leaks.[80]

47. Hydrostatic testing is also performed on old pipeline to check for leaks as part of the company's maintenance or integrity management program.[81]

48. The third type of hydrostatic testing is what is at issue in this case. That is, hydrostatic testing that is done on pipe that has already been placed in the ground (generally prior to 1970) and is being tested to establish a baseline maximum pressure.

49. This third type of testing is done only one time. If the testing shows leaking or deterioration the pipe is repaired or replaced (and the cost of testing and repair may or may not be eligible for inclusion in ISRS rates). If there is no problem,

[75] Laclede Exhibit 3, p. 9, lns. 8-10.
[76] Tr. p. 128, lns. 6-9; and Staff Exhibit 5, pp. 3-4.
[77] Laclede Exhibit 3, p. 8, lns. 16-19; and p. 11, lns. 17-19.
[78] Laclede Exhibit 2, p. 11, lns. 3-14, and Revised Rebuttal Schedule GWB-2.
[79] Tr. p. 145, lns. 11, through p.146, lns. 23.
[80] Tr. p. 145, lns. 11-14.
[81] Tr. p. 145, lns. 11-19.

nothing physical occurs. The testing determines the maximum allowable operating pressure and records are kept of that result.[82]

50. The third type of testing provides confidence to the company that the pipeline is expected to last for an additional period of years. However, no physical changes have been made to the pipe in contrast to relining, insertion, or joint encapsulation projects.[83]

IV. Conclusions of Law

Laclede and MGE are each a "gas corporation" and a "public utility" as those terms are defined by Section 386.020, RSMo (Supp. 2012). The Commission's authority is limited to that specifically granted by statute or warranted by clear implication as necessary to effectively render a specifically granted power.[84] Laclede and MGE are subject to the Commission's jurisdiction, supervision, control, and regulation, as provided in Chapters 386 and 393, RSMo.

Sections 393.1009 through 393.1015, RSMo (Supp. 2012) ("ISRS statutes") authorize a gas corporation to establish or change an ISRS rate schedule outside of a general rate case after approval by the Commission. An ISRS is a statutorily permitted form of rate adjustment mechanism that allows a public utility to change rates based on the consideration of a single issue.[85] Thus, the Commission has the authority under the ISRS statutes to consider and approve ISRS requests such as the ones proposed in the petitions.[86]

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[82] Laclede Exhibit 3, p.5, Ins. 18-21.
[83] Tr. p. 121, lns. 21-22; and pp. 123-124.
[84] *State ex rel. Int'l Telecharge, Inc. v. Mo. Pub. Serv. Comm'n*, 806 S.W.2d 680, 686 (Mo. App. W.D. 1991).
[85] *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).
[86] Laclede Exhibits 4 and 5.

Since Laclede and MGE brought the petitions, they bear the burden of proof.[87] The burden of proof is the preponderance of the evidence standard.[88] In order to meet this standard, Laclede and MGE must convince the Commission it is "more likely than not" that its allegations are true.[89] Section 393.1015.2(4), RSMo (Supp. 2012), states that "[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015."

Eligible Expenses

The first issue for determination is whether the Commission should approve ISRS revenue requirement increases for Laclede and MGE in this case. Public Counsel argues that the Commission should reject the ISRS change petitions because they seek to recover ineligible expenses not authorized by law. These allegedly ineligible expenses were of two types: the replacement of plastic pipe mains and service lines that were relatively new; and hydrostatic testing of plastic pipe to establish a maximum allowable operating pressure (MAOP).[90]

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[87] "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).

[88] *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).

[89] *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).

[90] *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing*, File Nos. GO-2016-0332 and GO-2016-0333 (filed Dec. 9, 2016).

Section 393.1012.1, RSMo (Supp. 2012), provides that a gas corporation may petition the Commission to change its ISRS rate schedule "to provide for the recovery of costs for eligible infrastructure system replacements."[91] That term is defined in Section 393.1009(3), RSMo (Supp. 2012) as "gas utility plant projects that: (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers; (b) Are in service and used and useful; (c) Were not included in the gas corporation's rate base in its most recent general rate case; and (d) Replace or extend the useful life of an existing infrastructure."[92]

Further, a "gas utility plant project" is defined in Section 393.1009(5), RSMo (Supp. 2012). That section states:

> "'Gas utility plant projects' may consist only of the following:
>
> (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components <u>installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition</u>;
>
> (b) Main relining projects, service line insertion projects, joint encapsulation projects, <u>and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements</u>; and
>
> (c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.[93]

First, Public Counsel argues that Laclede and MGE have not shown that replacing plastic pipe was done "to comply with state or federal safety requirements" because the existing facilities were "worn out or deteriorated." To determine eligibility,

[91] Emphasis added.
[92] Emphasis added.
[93] Emphasis added.

the Commission must determine if the existing facilities were worn out or deteriorated.[94] No party disputed that the cast iron and bare steel pipes were considered worn out or deteriorated. The issue is whether certain costs associated with replacing connected plastic mains and service lines at the same time that cast iron and steel mains and service lines are replaced can be recovered through the ISRS.

Staff and Laclede Gas Company witnesses testified that the plastic mains being replaced were interspersed with the cast iron and steel pipe because they had been used to repair earlier problem areas.[95] Thus, when Laclede and MGE replace the deteriorated and worn out cast iron and steel, some plastic pipe is also incidentally replaced.[96] Additionally, because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.[97] The relocation of the mains further necessitated the replacement of the service lines. Even with all of this interrelated replacement, because of the new efficiencies achieved with the type of replacement pipe, the new locations, and abandoning the old pipe in place, more cast iron and plastic pipe in total was retired than new plastic pipe was installed.[98]

The Commission concludes that because the plastic pipe in this case was an integral component of the worn out and deteriorated cast iron and steel pipe, as evidenced by the credible testimony of Staff and Laclede Gas Company witnesses, the cost of replacing it can be recovered.

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[94] *Office of the Public Counsel v. P.S.C.*, 464 S.W.3d 520, 525 (Mo. 2015).
[95] Laclede Exhibit 3, p. 9, lns. 10-13.
[96] Laclede Exhibit 3, p. 9, lns. 5-7.
[97] Tr. p. 128, lns. 14-23; and p. 132, lns. 12-22; and Laclede Exhibit 3, pp. 10-11.
[98] Staff Exhibit 5, p, 3, lns. 11 and 21; p. 7; and p. 9.

This decision can be distinguished from the Commission's decision to not allow telemetry expenses as part of ISRS because those items were discrete additions to ISRS-eligible projects and were included in the pipeline replacement projects as a matter of convenience.[99] In contrast, the incidental replacement of plastic pipe connected to cast iron or steel, is not discrete and separate. These plastic pipes that are being replaced were installed to fix an immediate problem and intended to remain until Laclede or MGE could schedule the entire main replacement.[100] The plastic patches are no longer separate and discreet once integrated into the system. Thus, the Commission concludes that once installed, these patches become part of the "facility" that is being replaced.

Furthermore, not allowing recovery of the portions of the main replacement projects that incidentally consist of plastic pipe would be a disincentive to the gas utilities to replace deteriorated pipelines containing portions of plastic.[101] Such a disincentive would be particularly troubling in these circumstances as the more patches there are in a pipe, the more vulnerable that pipe is to leaks, which could cause a degradation of safety.[102] Pragmatically, that result would be troubling, but it would also be contrary to the legislative purpose of the ISRS statutes. Therefore, the Commission concludes that each project that replaced cast iron, steel, and plastic pipes contemporaneously were all part of a single segment of pipeline that was worn out or deteriorated.

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[99] *In the matter of the Verified Application and Petition of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Laclede Gas Service Territory*, and *In the Matter of the Application of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Missouri Gas Energy Service* Territory, File Nos. GO-2015-0341 and GO-2015-0343, (*Report & Order*, issued Nov. 12, 2015).
[100] Staff Exhibit 5. pp. 5-6.
[101] Staff Exhibit 5, p. 5, lns.10-14.
[102] Tr. p. 135, lns. 9-23; and Tr. p. 136, ln. 22 through p. 138, ln. 14.

The hydrostatic testing at issue, however, is not an ISRS eligible expense. Pursuant to Section 393.1009(3), RSMo (Supp. 2012), the first criteria for ISRS eligibility is that it must be a gas utility plant project, the definition of which includes, "Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life. . ." of a pipe.[103] Laclede argues that hydrostatic testing extends the useful life of a pipe in that the testing provides confidence to the company that the pipeline is expected to last for an additional period of years. However, hydrostatic testing must first qualify as a project similar to main relining, service line insertion, or joint encapsulation before it matters whether useful life is extended.

The evidence shows that nothing physically is added to or taken away from the pipes that are tested.[104] If the testing shows no leaking or deterioration the maximum allowable operating pressure is determined, but nothing further occurs. The testing provides confidence to the company that the pipeline is expected to last for an additional period of years, but without first bearing some similarity to relining, insertion, or joint encapsulation projects, that extra confidence is irrelevant to ISRS eligibility.[105]

Consistent with this conclusion, the Federal Energy Regulatory Commission (FERC) has determined that hydrostatic testing does not extend the useful life of a pipeline.[106] That determination was expressly for the purpose of expanding on accounting guidance that had been previously issued in an "accounting release."[107]

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[103] Emphasis added.
[104] Tr. 123.
[105] Tr. 123-124.
[106] *Order on Accounting for Pipeline Assessment Costs*, FERC Docket No. AI05-1-000 (issued June 30, 2005) (FERC Order); OPC Exhibit 5.
[107] FERC Order, para. 1.

The FERC order specifically addresses the costs incurred when conducting baseline testing,[108] "The act of inspecting or assessing a pipeline segment does not by itself increase the useful life of a pipeline asset or improve its efficiency."[109] While the Commission is not bound by the FERC decision, it is a helpful guide in the Commission's analysis of this issue.

Laclede and MGE have not shown the pipe at issue will last any longer after testing than it would have lasted without. The only thing that has changed is that the company now has knowledge that it did not have previously. Even if the company had shown hydrostatic testing results in longer-lasting pipe, it has not shown that hydrostatic testing meets the definition of an ISRS-eligible project. The Commission concludes that this type of hydrostatic testing is not an ISRS-eligible expense.

V. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law, the Commission finds that the substantial and competent evidence in the record supports the conclusion that Laclede and MGE have met, by a preponderance of the evidence, their burden of proof to demonstrate that the petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo (Supp. 2012) with the exception of the hydrostatic testing expense at issue. The Commission concludes that Laclede and MGE shall be permitted to change their ISRS rates to recover ISRS revenues equal to those set out by Staff in its Recommendations, less the hydrostatic testing expenses.

[108] FERC Order, para. 30.
[109] FERC Order, para. 21.

Further, these ISRS revenues shall follow the rate design for each customer class as set out in Appendix B of the Staff Recommendations.

Since the revenues and rates authorized in this order differ from those contained in the tariffs Laclede and MGE submitted with their petitions, the Commission will reject those tariff sheets. The Commission will allow Laclede and MGE an opportunity to submit new tariff sheets consistent with this order. Further, because Public Counsel's objections and request for hearing was not filed until the 70th day of this 120-day proceeding and due to the various state and federal holidays interfering with the hearing schedule, the Commission finds good cause to make this order effective in less than 30 days.[110]

THE COMMISSION ORDERS THAT:

1. The motions contained in the *Response of Laclede Gas Company in Opposition to OPC's December 9 Motion, or in the Alternative, Motion to Strike Certain Issues* is denied.

2. The January 10, 2017, motion to strike portions of Laclede's brief is denied and the alternate motion to allow OPC to respond is granted.

3. The January 16, 2017, *Laclede and MGE's Motion to Strike and Response to OPC's Motion to Strike* is denied.

4. The tariff sheet filed by Laclede Gas Company for its Laclede service territory on September 30, 2016, and assigned Tariff No. YG-2017-0047, is rejected.

[110] In fact, even though the parties were fully aware of the time constraints on the Commission to issue its order within the 120-day statutory period, the parties originally agreed to a procedural schedule providing for a hearing on Jan. 10, 2017, with briefs not filed until Jan. 16, 2017 (the Martin Luther King, Jr. State Holiday). That schedule would have effectively given the Commission only 12 days to prepare this Report & Order, hold a properly noticed meeting to vote on the order, and issue it with a reasonable amount of time to allow for rehearing requests before it became effective.

5. Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge for its Laclede service territory in an amount sufficient to recover ISRS revenue of $4,504,138 for File No. GO-2016-0333.

6. Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design.

7. Laclede Gas Company shall file a tariff sheet in compliance with this order no later than 1:00 p.m., January 19, 2017.

8. Staff shall review the tariff sheet required by Ordered Paragraph 7 above after it is filed by Laclede Gas Company and file a recommendation as to whether the tariff sheet is in compliance with this order no later than 4:00 p.m., January 20, 2017.

9. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph 7 above shall file its response no later than 4:00 p.m., January 20, 2017.

10. The tariff sheet filed by Missouri Gas Energy, an Operating Unit of Laclede Gas Company on September 30, 2016, and assigned Tariff No. YG-2017-0048, is rejected.

11. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge sufficient to recover revenues of $3,362,598 less the amount of the hydrostatic testing as set out in this order for File No. GO-2016-0332.

12. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design method.

13. Missouri Gas Energy, an Operating Unit of Laclede Gas Company shall file a tariff sheet in compliance with this order no later than 1:00 p.m., January 19, 2017.

14. Staff shall review the tariff sheet required by Ordered Paragraph 13 above once it is filed and file a recommendation as to whether the tariff sheet is in compliance with this order no later than 4:00 p.m., January 20, 2017.

15. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph13 above shall file its response no later than 4:00 p.m., January 20, 2017.

16. This order shall become effective on January 28, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, and Coleman, CC, concur,
Rupp, C., dissents,
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 18th day of January, 2017.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Midwest Energy Consumers Group,	)	
	)	
Complainant,	)	
v.	)	File No. EC-2017-0107
	)	
Great Plains Energy Incorporated,	)	
	)	
Respondent.	)	

REPORT AND ORDER

Electric
Ä4. Transfer, lease and sale
Ä7. Jurisdiction and powers generally
Ä9. Jurisdiction and powers of State Commission

Evidence, Practice and Procedure
§2. Jurisdiction and powers

Public Utilities
§28. Foreign corporations or companies
The Holding: The Commission has jurisdiction over a Kansas utility's acquisition by an unregulated Missouri holding company where the Commission's approval of such an acquisition was a condition of an agreement approved in a prior proceeding which, in the first instance, had also allowed the creation of the holding company.

Evidence, Practice and Procedure
§2. Jurisdiction and powers
The Commission is an agency created by the legislature. It possesses only those powers expressly granted or necessarily implied by statute. Citing Section 386.010, RSMo, and *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. banc 1943).

The Commission's jurisdiction cannot exceed what is statutorily authorized and subject matter jurisdiction cannot be conferred by consent or agreement of the parties. The inclusion of a condition in an agreement does not in and of itself create within the Commission enforcement authority. Citing *State Tax Com'n v. Administrative Hearing*

Com'n, 641 S.W.2d 69 (Mo. 1982); and *Livingston Manor, Inc. v. Department of Social Services*, 809 S.W.2d 153, 156 (Mo.App. W.D. 1991).

Public Utilities

§7. Jurisdiction and powers of the State Commission

§10. Tests in general

The Commission is tasked with acting in the public interest. The Commission's ability to impose "reasonable and necessary" conditions on the reorganization of an electrical corporation was the Legislature's way of ensuring the Commission could accomplish that task. Citing *State ex rel. Gulf Transport Co. v. Public Service Com'n*, 658 S.W.2d 448, 456 (Mo.App. 1983).

Evidence, Practice and Procedure

§2. Jurisdiction and powers

§9. Particular kinds of evidence generally

The Commission cannot enforce, construe or annul contracts, nor can it declare or enforce principles of law or equity. However, the "Commission is entitled to interpret its own orders and to ascribe to them a proper meaning and, in so doing, the Commission does not act judicially but as a fact-finding agency." Citing *Wilshire Const. Co. v. Union Elec. Co.Comm'n,* , 463 S.W.2d 903, 905 (Mo. 1971);259 S.W.3d 544, 547 (Mo. App. 2008); *State ex rel. Cass County v. Pub. Serv. State ex rel. Beaufort Transfer Co. v. Public Service Commission of Missouri,* 610 S.W.2d 96, 100 (Mo. App. 1980).

§18. Record and evidence in other proceedings

In interpreting agreements which the Commission has approved, the Commission is not limited to the terms of definitions set out in Missouri statutes. Settlement agreements are not akin to rules or regulations, which routinely rely on statutes to define terms or phrases. Unless an agreement expressly defines the meaning of a term, the Commission will use the principles of contract law to interpret the agreement's meaning. Citing *Union Elec. Co. v. Dir. Of Revenue*, 425 S.W.3d 118 (Mo.banc 2014); *Withers v. City of Lake St. Louis*, 318 S.W.3d 256, 261(Mo.App. E.D. 2010).

The terms of an agreement reached by the parties should be construed to avoid a result that renders those terms meaningless. Thus, an agreement should not be construed to require of the Commission no more than what a statute already requires of the Commission.

Evidence, Practice and Procedure

§5. Admissibility

§7. Competency

§8. Stipulation
§10. Admissions
§18. Record and evidence in other proceedings

Ordinarily, unsworn statements by counsel are not evidence of the facts asserted, unless the facts are conceded to be true by other parties. Citing *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo.App. S.D. 1997). But where the parties are disputing the terms of a settlement agreement, the statements by counsel regarding the meaning of the "Prospective Merger Conditions" section of the agreement and why it was included in the agreement establishes the intent of the parties when drafting the agreement. No citation.

Evidence, Practice and Procedure
§8. Stipulation
§10. Admissions
§18. Record and evidence in other proceedings
§30. Settlement procedures

At the time of the 2001 Agreement, the Commission and the parties relied on KCPL's and GPE's assurances that Section 7 [of the Stipulation] authorized the Commission's oversight over the future holding company. The Commission ordered the parties to comply with the terms of the agreement. Were the Commission to agree with GPE's analysis, it would render the terms of a negotiated stipulation and agreement meaningless and unenforceable; a result that should be avoided. For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation.

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 February, 2017.

Midwest Energy Consumers Group,	)	
	)	
Complainant,	)	
v.	)	File No. EC-2017-0107
	)	
Great Plains Energy Incorporated,	)	
	)	
Respondent.	)	

REPORT AND ORDER

Issue Date: February 22, 2017

Effective Date: March 4, 2017

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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REPORT AND ORDER

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SENIOR REGULATORY LAW JUDGE: Kim S. Burton

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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Great Plains Energy Incorporated	)	
	)	
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REPORT AND ORDER

Issue Date: February 22, 2017 Effective Date: March 4, 2017

PROCEDURAL HISTORY

On October 11, 2016, the Midwest Energy Consumers Group ("MECG") filed a complaint with the Missouri Public Service Commission (the "Commission") against Great Plains Energy Incorporated alleging that the holding company is violating the Commission's *Order Approving Stipulation and Agreement and Closing Case*, in Case No. EM-2001-464. The Commission issued a *Notice of Contested Case and Order Directing Filing*. Great Plains Energy Incorporated submitted an answer and a motion to dismiss. The Consumers Council of Missouri filed an uncontested application to intervene, which was granted by the Commission on November 9, 2016. On December 21, 2016, the Commission conducted oral arguments on Great Plains Energy Incorporated's motion to dismiss. The Midwest Energy Consumers Group filed its

Second Amended Complaint (hereinafter, the "Complaint") on December 28, 2016.[1] On January 4, 2017, the Commission issued its *Order Denying Motion to Dismiss and Scheduling Evidentiary Hearing*, which directed Great Plains Energy Incorporated to file an answer to the Complaint and set a February 1 evidentiary hearing date.[2] Great Plains filed its *Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated*.[3]

On January 18, 2017, MECG, Great Plains Energy Incorporated, the Staff of the Missouri Public Service Commission ("the Commission's Staff"), and Consumers Council of Missouri submitted a *Joint Stipulation of Facts and List of Issues, Request to Take Official Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment* (the "Joint Motion").[4] In the Joint Motion, the signatories stated that based on stipulated facts, they did not intend to call any witnesses or conduct any cross-examination. The four signatories indicated that the Commission could determine the legal questions in the Complaint based on the stipulated facts and matters identified by the parties for official notice by the Commission. In the Joint Motion, the parties also waived their right under Section 386.390, RSMo 2000, to an evidentiary hearing and requested expedited treatment.

Since the Office of the Public Counsel is automatically a party in any action before the Commission,[5] an order was issued setting a deadline for the Public Counsel to submit a response to the Joint Motion. The Commission also set a deadline for

[1] EFIS Item No. 26.
[2] EFIS Item No. 27.
[3] EFIS Item No. 28, Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated.
[4] EFIS Item No. 29.
[5] 4 CSR 240-2.010(10).

parties to file objections to the admission of the documents identified for official notice in the Joint Motion as exhibits in the record.

On January 20, 2017, the Office of the Public Counsel filed a response stating that it did not object to the request to cancel the hearing set for February 1, 2017. No objections to the admission of identified documents as exhibits were received. The Commission canceled the previously scheduled hearing set for February 1, 2017,[6] admitted exhibits into the record, and set a briefing schedule for the parties.[7] Great Plains Energy Incorporated, MECG, and the Commission's Staff filed their initial briefs on January 31, 2017. That same day, Spire, Inc. filed its *Petition of Spire, Inc. for Leave to File Amicus Curiae Brief*.[8] MECG and the Commission's Staff filed reply briefs on February 6, 2017.[9] The Commission issued its *Order Granting Petition for Leave to File Amicus Curiae Brief* on February 8, 2017.[10]

The case was submitted on stipulated facts and briefs.

FINDINGS OF FACT

1. Kansas City Power & Light Company ("KCPL") is a vertically integrated public utility that generates, transmits, and sells electrical energy to residential customers in Missouri.[11]

[6] EFIS Item No. 33, Order Canceling Hearing.
[7] EFIS Item No. 34, Order Admitting Exhibits and Setting Briefing Schedule.
[8] EFIS Item No. 44.
[9] EFIS Items No. 47 and 48.
[10] EFIS Item No. 50.
[11] Exhibit 2, pg. 5.

2. In 2001, KCPL filed an application with the Commission seeking approval to reorganize into a holding company structure, with Great Plains Energy, Incorporated ("GPE") becoming the new holding company, and KCPL existing as its subsidiary.[12]

3. The Commission conducted two on-the-record hearings on KCPL's uncontested application.[13] During the July 5, 2001 hearing, representatives for KCPL and GPE testified regarding KCPL's proposed reorganization.[14] Commissioners also questioned attorneys for the parties about the terms of the *First Amended Stipulation and Agreement* (the "2001 Agreement"), a settlement agreement reached by the Commission's Staff, the Office of the Public Counsel ("OPC"), GPE, KCPL and Great Plains Power, Incorporated.[15]

4. The 2001 Agreement included a section captioned "Prospective Merger Conditions" (hereinafter, "Section 7"), which stated the following:

> GPE agrees that it will not, directly or indirectly, acquire or merge with a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility unless GPE has requested prior approval for such transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction. In addition, GPE agrees that it will not allow itself to be acquired by a public utility, or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility, unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction.[16]

[12] Case No. EM-2001-464.
[13] Exhibits 3 and 4.
[14] Exhibit 3.
[15] Exhibit 1. Other parties to the case did not joint in signing the 2001 Agreement, but did not object to its approval either.
[16] Exhibit 1.

5. During the July 5, 2001 hearing, the following interaction occurred between Commissioner Connie Murray, James Fischer, Counsel for KCPL and GPE, and Ruth O'Neill, Counsel for OPC:

> *Commissioner Murray:* All right. My last question is somewhat related, I suppose. It's Section 7, prospective merger conditions where GPE agrees, and I would like to know if the parties believe that that gives the Commission jurisdiction over an unregulated holding company that it would otherwise not have?
>
> *Mr. Fischer:* Your Honor, from the Company's perspective, I would say it's inconsistent, in my opinion, with your holdings on other holding company mergers of parents. However, again, as a negotiated item, in order to get a stipulation between the Staff, the Public Counsel and the Company, we have agreed to this provision.
>
> …
>
> *Commissioner Murray:* Before you respond, Ms. O'Neill, I just have a quick follow-up for Mr. Fischer. Who has the authority to bind GPE?
>
> *Mr. Fischer:* Your Honor, I failed to also enter my appearance on behalf of GPE. I'm speaking on behalf of the Great Plains Energy Company as well.
>
> *Commissioner Murray:* Thank you. Go ahead, Ms. O'Neill.
>
> *Ms. O'Neill:* Yes. We recognize that the Commission has taken certain positions regarding jurisdiction on some other cases. However, we do believe that the Commission does have the ability to exercise jurisdiction over matters relating to public utilities….We believe it is appropriate, however, to include this term within this agreement. We believe that GPE, who is a signatory to this agreement, can agree to be bound on those matters which are significantly related to Commission jurisdiction and oversight to not oppose our request for jurisdiction and not impede our ability to challenge any claim that there isn't jurisdiction. [17]

6. In its July 31, 2001 *Order Approving Stipulation and Agreement and Closing File*, the Commission approved KCPL's application to reorganize and establish GPE as a publicly traded holding company, with KCPL becoming a wholly-owned

[17] Exhibit 3, pg. 33, ln. 14 - pg. 35, ln. 6.

subsidiary of GPE.[18] The Commission also approved the 2001 Agreement[19] and directed KCPL and GPE to comply with its terms. The *Order Approving Stipulation and Agreement and Closing File* was not appealed.[20]

7. Presently, GPE is a Missouri corporation and the parent holding company for the stock of Missouri-based public utilities KCPL and KCP&L Greater Missouri Operations Company ("GMO").[21]

8. On May 29, 2016, GPE entered into an *Agreement and Plan of Merger*, whereby GPE will acquire all of the capital stock of Westar Energy, Inc. ("Westar") in a transaction valued at approximately $12.2 billion, which is expected to close in the Spring of 2017.[22]

9. Westar is a Kansas corporation headquartered in Topeka, Kansas. Westar is authorized to conduct business by the Kansas Corporation Commission as an electric public utility in the State of Kansas.[23] Westar is not a Missouri-based public utility, nor is it regulated by the Missouri Public Service Commission.[24]

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[18] Exhibit 2, Order Approving Stipulation and Agreement and Closing File in Case No. EM-2001-464.
[19] Exhibit 1.
[20] Case No. EM-2001-464.
[21] EFIS Item No. 28, Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated, pg 2.
[22] EFIS Item No.29; Joint Stipulation of Facts and List of Issues, Request to Take Office Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment. ¶1. *See also,* EFIS Item No. 15; Motion to Dismiss of Great Plains Energy Incorporated and Suggestions in Support. Statement of Facts, pg. 3.
[23] EFIS Item No. 28, Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated, pg 2.
[24] EFIS Item No. 29; Joint Stipulation of Facts and List of Issues, Request to Take Office Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment.¶ 2 and 3. Although Westar is not a public utility regulated by this Commission, it does own 100% of the stock of Westar Generating, Inc., which in turn owns an undivided 40% share of the State Line Combined Cycle Generating Facility located within the State of Missouri near Joplin. This Commission granted Westar Generating, Inc., a Certificate of Convenience and Necessity for the State Line Combined Cycle Generating Facility. However, Westar Generating, Inc. does not sell electricity to or provide any service to a member of the public in Missouri. *See also*, EFIS Item No. 28, Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated, pg 1.

10. On May 31, 2016, GPE's President and Chief Executive Officer Terry Bassham, notified the Commission and OPC via email of GPE's *Agreement and Plan of Merger*. Mr. Bassham informed the Commission that GPE did not believe the proposed merger with Westar was subject to the Commission's approval since it would occur at the parent corporation/holding company level by entities that are not electrical corporations in Missouri subject to the Commission's jurisdiction.[25]

11. Midwest Energy Consumers Group ("MECG") is an incorporated entity that represents large commercial and industrial power customers.[26] MECG filed a Complaint alleging GPE's failure to seek the Commission's approval of the Westar merger is a violation of the terms of the 2001 Agreement.[27]

12. As of the time of this order, GPE has not sought the Commission's approval to acquire Westar.[28]

CONCLUSIONS OF LAW

Based in Topeka, Kansas, Westar is a public utility that provides electricity to customers in the State of Kansas. The parties agree that while Westar is a Kansas-based public utility, subject to the oversight of the Kansas Corporation Commission,[29] Westar is not regulated by this Commission. MECG's Complaint asserts that under the terms of the 2001 Agreement, GPE is required to obtain the Commission's approval

[25] EFIS Item No. 29; Joint Stipulation of Facts and List of Issues, Request to Take Office Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment. ¶9.
[26] EFIS Item No. 26.
[27] The Complaint was later amended to the Second Amended Complaint on December 28, 2016, which will be referred to as the "Complaint" throughout this order. EFIS Item No. 26.
[28] *See* EFIS Item No.29;Joint Stipulation of Facts and List of Issues, Request to Take Office Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment, ¶10.
[29] The Kansas Corporation Commission is the state agency tasked with regulating public utilities in the State of Kansas.

before it can acquire Westar (the "Westar Merger"). GPE, on the other hand, maintains that MECG's position would improperly expand the Commission's jurisdiction to include the acquisition of non-Missouri regulated utilities by Missouri-based holding companies. This, GPE contends, would grant the Commission a power never contemplated by Missouri law. For the reasons set forth below, the Commission disagrees with GPE's position.

Commission's Jurisdiction to Consider Complaint

At its most basic level, this case is a complaint alleging failure to comply with a prior Commission order. The Commission is an agency created by the legislature.[30] It possesses only those powers expressly granted or necessarily implied by statute.[31] Section 386.390.1, RSMo,[32] authorizes a complaint to be made by any person, corporation, or commercial association that sets forth any act done or omitted to be done by a corporation, person, or public utility, in violation of any law or order of the Commission.[33] MECG is invoking the Commission's jurisdiction under this general complaint statute to determine if a violation of a previously issued Commission order occurred.

MECG argues that GPE violated the Commission's order directing GPE to comply with the terms of the 2001 Agreement.[34] More specifically, MECG argues that GPE violated and continues to violate the conditions set in Section 7 by failing to file an

[30] *See* Section 386.010, Public Service Commission Law.
[31] *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. banc 1943).
[32] All statutory references are to the 2000 Missouri Revised Statutes, as cumulatively supplemented.
[33] Section 386.390.1, RSMo. All statutory references are to the 2000 Missouri Revised Statutes, as cumulatively supplemented.
[34] Exhibit 2. July 31, 2001 Order Approving Stipulation and Agreement and Closing File in Case No. EM-2001-464

application for the Commission's approval of the Westar Merger. By statute, the Commission is authorized to hear MECG's Complaint.

For this reason, the Commission will determine if, as asserted by the Complaint, GPE violated the Commission's directive to comply with the terms of the 2001 Agreement by failing to file an application for Commission-approval of the Westar Merger. As the complainant, MECG bears the burden of proof.[35]

Commission's Authority to Approve KCPL's Reorganization

Before determining what obligations exist under the terms of the 2001 Agreement, we must first consider the Commission's authority to order GPE's compliance. GPE correctly states that the Commission's jurisdiction cannot exceed what is statutorily authorized and that subject matter jurisdiction cannot be conferred by consent or agreement of the parties.[36] Simply put, the inclusion of a condition in an agreement does not in and of itself create within the Commission enforcement authority.[37]

Absent statutory authority to place conditions on GPE's potential merger actions, GPE's prior consent to Section 7 would be unenforceable by the Commission.[38] However, as MECG correctly points out, the Commission has the requisite authority to enforce Section 7 through its ability to set conditions on the reorganization of KCPL in 2001.

It is undisputed that KCPL was (and remains) an electrical corporation regulated as a public utility. In 2001, when KCPL wanted to become the subsidiary of a newly

[35] *State ex rel. GS Technologies Operating Co., v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo.App. 2003).
[36] *State Tax Com'n v. Administrative Hearing Com'n*, 641 S.W.2d 69 (Mo. 1982).
[37] *Livingston Manor, Inc. v. Department of Social Services*, 809 S.W.2d 153, 156 (Mo.App. W.D. 1991).
[38] *Tetzner v. Department of Social Services*, 446 S.W.3d 689, 692 (Mo.App. W.D. 2014).

formed holding company, it was statutorily required to first obtain the Commission's consent. Section 393.250, RSMo, states as follows:

> 1. Reorganizations of…electrical corporations…shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.
>
> …
>
> 3. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the Commission. **The Commission may by its order impose such condition or conditions as it may deem reasonable and necessary**. (Emphasis added.)

The Commission is tasked with acting in the public interest.[39] The Commission's ability to impose "reasonable and necessary" conditions on the reorganization of an electrical corporation was the Legislature's way of ensuring the Commission could accomplish that task. Reorganizing the corporate structure of a public utility can impact the debt structure and cost of capital for the resulting companies well past the closing of the transaction. Review of proposed public utility reorganizations by the Commission is needed to minimize the potential risks to both present and future ratepayers. GPE does not challenge the Commission's ability to set "reasonable and necessary" conditions. GPE does, however, argue that the Commission's authority under Section 393.250 can never extend to an electrical corporation located outside of Missouri. GPE's argument confuses the Commission's authority over KCPL – the electrical corporation at issue in the 2001 reorganization case – with authority over Westar. Ultimately, the Commission's ability to enforce the terms of the 2001 Agreement does not depend on the location of

[39] *State ex rel. Gulf Transport Co. v. Public Service Com'n*, 658 S.W.2d 448, 456 (Mo.App. 1983).

GPE's acquisition, but rather, whether the conditions included in Section 7 were "reasonable and necessary" under Section 393.250.3.

When KCPL sought Commission approval to adjust its corporate structure, it was statutorily obligated to seek approval for the type of merger currently contemplated by GPE.[40] Setting a requirement to obtain Commission approval on prospective mergers was both a reasonable and necessary way of ensuring that KCPL – through its future iterations – would not evade the level of Commission scrutiny mandated by Section 393.190, RSMo. It was a reasonable and necessary way to protect the ratepaying public from harmful acquisitions at the holding company level.[41]

The Commission cannot enforce, construe or annul contracts,[42] nor can it declare or enforce principles of law or equity.[43] However, the "Commission is entitled to interpret its own orders and to ascribe to them a proper meaning and, in so doing, the Commission does not act judicially but as a fact-finding agency."[44] Section 7 was a Section 393.250.3 condition agreed to by the parties and fixed by the Commission before approval was granted for KCPL's reorganization in 2001. Therefore, the Commission is not exceeding its authority by enforcing the reasonable and necessary conditions of Section 7.

Principles of Contract Construction Apply to the 2001 Agreement

[40] Section 393.190, RSMo, requires an electrical corporation to secure the Commission's authority before it can directly or indirectly merge or consolidate with any other corporation, person or public utility.
[41] Under Section 386.510, RSMo 2000, parties at the time the July 31, 2001 Order Approving Stipulation and Agreement and Closing File in Case No. EM-2001-464 was issued were able to request a rehearing before appealing the order. However, no parties requested a rehearing or appealed that Commission order.
[42] *Wilshire Const. Co. v. Union Elec. Co.*, 463 S.W.2d 903, 905 (Mo. 1971).
[43] *State ex rel. Cass County v. Pub. Serv. Comm'n,* 259 S.W.3d 544, 547 (Mo. App. 2008).
[44] *State ex rel. Beaufort Transfer Co. v. Public Service Commission of Missouri,* 610 S.W.2d 96, 100 (Mo. App. 1980).

In the 2001 Agreement, GPE agreed in Section 7 that it would not directly or indirectly acquire or merge with a public utility or the affiliate of a public utility unless it had requested prior approval for the transaction from the Commission. Since the Commission has the statutory authority to enforce the 2001 Agreement, the Commission must determine if the Westar Merger is subject to the conditions set in Section 7. It is undisputed that GPE has yet to file an application for Commission-approval of the Westar Merger.

The parties disagree on the meaning of the term "public utility" within Section 7. MECG asserts that, as used in the agreement, "public utility" is not limited to entities located within Missouri. Therefore, Westar is considered a public utility for which GPE must seek Commission approval before acquiring. GPE contends that, as used in the 2001 Agreement, the term "public utility" can only mean a public utility based in Missouri, since by statute, the Commission's authority only applies to a public utility within the state.

GPE relies on the definitions used in the Public Service Commission Law, specifically, Section 386.020. GPE contends that even though the term "public utility" is not defined in the 2001 Agreement, the only reference to any state law in the agreement is to Missouri law. This, according to GPE, means that "public utility" can only be interpreted as it is meant in Missouri statutes. Specifically, the Commission, as a creature of statute, only has jurisdiction over "the manufacture, sale, or distribution of…electricity for light, heat and power, *within the state*, and to persons or corporations owning, leasing, operating, or controlling the same…." (Emphasis added).[45] However,

[45] Section 386.250(1), RSMo.

settlement agreements are not akin to rules or regulations, which routinely rely on statutes to define terms or phrases.[46] Unless an agreement expressly defines the meaning of a term, the Commission will use the principles of contract law to interpret the agreement's meaning.[47]

Under principles of contract construction, the Commission first examines the plain language of the agreement to determine whether it is clear or if an ambiguity exists. When contract language is clear, we discern intent from the document alone.[48] The 2001 Agreement does not state that as used in the agreement, terms would have the same meaning as they do under Missouri law. GPE's argument that the statutory definition of "public utility" should apply ignores the cardinal rule for interpreting an agreement – to ascertain and give effect to the parties' intentions.[49] This is accomplished by giving words their plain, ordinary, and usual meaning.[50] That is, the meaning that a person of average intelligence, knowledge, and experience would deem reasonable.[51]

Webster's Third New International Dictionary defines "public utility" as "a business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service and provision of facilities."[52] The term "public utility" does not

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[46] *Union Elec. Co. v. Dir. Of Revenue*, 425 S.W.3d 118 (Mo.banc 2014) Stating that terms in rules and regulations of a state agency are invalid if they are beyond the scope of authority conferred upon the agency, or if they attempt to expand or modify statutes.
[47] *Withers v. City of Lake St. Louis*, 318 S.W.3d 256, 261(Mo.App. E.D. 2010).
[48] *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club*, 491 S.W.2d 261, 264 (Mo. banc 1973).
[49] *Park Lane Medical Center of Kansas City, Inc. v. Blue Cross/Blue Shield of Kansas City*, 809 S.W.2d 721 (Mo.App.W.D. 1991).
[50] *Chochorowski v. Home Depot* U.S.A., 404 S.W.3d 220, 226 (Mo. banc 2013).
[51] *Farmland Industries, Inc. v. Republic Insurance Company*, 941 S.W.2d 505, 508 (Mo. banc 1997).
[52] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1836 (1986).

distinguish entities based on locale. Westar is a public utility under the laws of the State of Kansas. Consequently, it is reasonable to conclude that, by its plain language, the term "public utility" clearly and unambiguously encompasses all public utilities, including those in the State of Kansas. However, were the Commission to conclude an ambiguity exists, GPE's argument would still fail.

Unless the context of an agreement makes clear that a technical or special meaning was intended or the words have a special meaning in the parties' trade or business, the Commission interprets the words used as having their common and ordinary meaning.[53] GPE may argue that the term "public utility" *did* have a technical or special meaning to the parties who drafted the 2001 Agreement, since the parties were aware of the statutory restriction placed on the Commission's jurisdiction as being over the sale or distribution of electricity within the state, and to persons or corporations owning, leasing, operating, or controlling the same. However, GPE's argument would fail for two reasons. First, it is not supported by the stated intentions of the parties at the time the agreement was entered. Second, it would render the Section 7 condition at issue meaningless.

When interpreting the 2001 Agreement, the Commission will consider what the parties were attempting to accomplish.[54] GPE argues that at the time the agreement was created the parties intended for the Section 7 condition to only apply to Missouri public utilities. However, this contradicts the statements made at the on-the-record hearing before the Commission. In the reorganization case, counsel for KCPL and GPE acknowledged that the Commission would maintain jurisdiction over prospective

[53] *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853, 859-60 (Mo. banc 2006).
[54] *Glass v. Mancuso*, 444 S.W.2d 467 (Mo. 1969).

mergers involving the holding company and a public utility.[55] Attorneys for Staff and the Office of the Public Counsel agreed with that pronouncement. Normally, unsworn statements by counsel are not evidence of the facts asserted, unless the facts are conceded to be true by other parties.[56] Counsel for OPC and Staff did not disagree on the meaning of Section 7. As counsel for KCPL and GPE admitted, "as a negotiated item, in order to get a stipulation between the Staff, the Public Counsel and the Company, we have agreed to this provision."[57]

In circumstances such as these, where the parties are disputing the terms of a settlement agreement, the statements by counsel for KCPL and GPE regarding the meaning of Section 7 and why it was included in the 2001 Agreement establishes the intent of the parties when drafting the agreement. Therefore, it weakens the credibility of GPE's current claims that the term "public utility" was never meant to apply to entities outside of Missouri, because at the time of the agreement, GPE's attorney acknowledged it was a condition negotiated by the parties for settlement purposes.

Furthermore, Section 393.190.1 already requires a regulated electrical corporation obtain the Commission's approval before selling, transferring, or merging its system with any other corporation, person or public utility.[58] This statute grants the Commission authority to review the merger of any Missouri regulated electrical

[55] Exhibit 3, pg. 33, ln. 14 - pg. 35, ln. 6.
[56] *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo.App. S.D. 1997).
[57] Staff's brief also makes a credible equitable estoppel argument, based on the reliance of the parties in the 2001 KCPL reorganization case on the statements of KCPL, GPE and their representatives. There are three elements to equitable estoppel: an admission, statement, or act inconsistent to claim afterwards asserted; action by other party in reliance upon such admission, statement or act; and injury to that other party as result of allowing first party to contradict admission, statement, or act. *Pinnell v. Jacobs.* 873 S.W.2d 925, 927 (Mo.App. E.D. 1994).
[58] Section 393.190.2 also requires Commission approval before an electrical corporation directly or indirectly acquires the stock or bond of other corporations engaged in the same or similar business. The statutory requirement to obtain Commission approval also applies to a gas corporation, water corporation, and sewer corporation.

corporation with GPE. GPE's interpretation of Section 7 - that it only applies to Missouri-based public utilities - would merely result in a duplication of the Commission review for a merger transaction under Section 393.190. It is unreasonable to assume the parties that negotiated Section 7 only intended for GPE to replicate what is already statutorily required, Commission approval for the merger of GPE and a Missouri-based public utility.[59] The terms of the 2001 Agreement should be construed to avoid a result that renders terms meaningless.[60] For this reason, GPE's arguments are not persuasive.

Prior Commission Decisions Concerning Public Utility Holding Companies

GPE points out that, in the past, the Commission has consistently found that it does not have jurisdiction over transactions at the holding company level. Even if true, it has no import in this case. The manner in which the Commission has in the past or may in the future handle holding company merger cases is not relevant to the specific facts before us.

Moreover, the examples referenced by GPE in its *Initial Brief* are not comparable to the facts presented here. GPE cites cases where the Commission stated that nothing in the statutes conferred jurisdiction over the merger of two non-regulated parent corporations.[61] The current case is distinguishable from those examples because this dispute involves the Commission's authority to enforce the terms of a prior Commission order and a settlement agreement in a reorganization case where Section 393.250 required Commission approval. For reasons already discussed, the Commission does have statutory authority to enforce its prior orders and the 2001 Agreement.

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[59] Section 393.190, RSMo.
[60] *Dunn Indus. Group v. City of Sugar Creek*, 112 S.W.3d 421, 428 (Mo. banc 2003).
[61] *See* Initial Brief of Great Plains Energy Incorporated, pg. 10.

GPE is the holding company for two Missouri public utilities, KCPL and GMO. An acquisition of the magnitude of the Westar Merger may have far-reaching financial ramifications on current and future customers of both KCPL and GMO. The merger scenario at issue is the type of transaction anticipated by Section 7 for Commission review.

Public Policy

GPE's position is troublesome from a public policy perspective. At the time of the 2001 Agreement, the Commission and the parties relied on KCPL's and GPE's assurances that Section 7 authorized the Commission's oversight over the future holding company. The Commission ordered the parties to comply with the terms of the agreement. Were the Commission to agree with GPE's analysis, it would render the terms of a negotiated stipulation and agreement meaningless and unenforceable; a result that should be avoided. For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation.

Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. Applying law to the facts in reaching its conclusion, the Commission finds that based on competent and substantial evidence, MECG met its burden of proof. GPE violated the terms of the 2001 Agreement and the Commission

order approving the 2001 Agreement by failing to seek Commission approval for the Westar Merger.

GPE did submit a joint application for a variance from the Commission's affiliated transactions rule.[62] However, that filing is not sufficient to meet the public detriment review required by Section 7. The public detriment standard is higher than the "for good-cause" showing required before the granting of a variance from a Commission rule. Moreover, in the variance case, GPE and its subsidiaries KCPL and GMO request the regulatory restrictions on transactions with Westar be waived *after* Westar becomes an affiliate. This would not permit the Commission to evaluate the potential public detriment before the merger is authorized. It would only allow the Commission to grant relief after the Westar Merger is a *fait accompli*.

The Commission will direct GPE to comply with the terms of Section 7 of the 2001 Agreement and file an application for prior approval of the Westar Merger, requesting the Commission's determination that the Westar Merger is not detrimental to the public interest.

The purpose of this decision is not to impede GPE's potential merger, which is expected to occur in the Spring of 2017.[63] The parties requested an expeditious determination on the Complaint.[64] For this reason, the Commission will allow this order to become effective in less than thirty days. This will allow time for GPE to make the necessary filing, and after proper notice is given, a hearing can be held promptly.

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[62] File No. EE-2017-0113; In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for a Variance from the Commission's Affiliate Transactions Rule, 4 CSR 240-20.015.

[63] EFIS Item No. 7; Motion to Dismiss of Great Plains Energy Incorporated and Suggestions in Support, Statement of Facts.

[64] EFIS Item No. 15;Proposed Procedural Schedule.

THE COMMISSION ORDERS THAT:

1. The Commission finds that GPE is in violation of the Commission's July 31, 2001 *Order Approving Stipulation and Agreement and Closing File*, issued in Case No. EM-2001-464.

2. No later than March 4, 2017, GPE shall file an application for the Commission's approval of the *Agreement and Plan of Merger* and a determination on whether the Westar Merger is detrimental to the public interest

3. This order shall go into effect on March 4, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Burton, Senior Regulatory Law Judge.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Joint Application of	)	
Missouri-American Water Company and Audrain	)	
Public Water Supply District No. 1 for Approval	)	**File No. WO-2017-0191**
Of a Territorial Agreement Concerning Territory	)	
In Audrain County, Missouri	)	

REPORT AND ORDER

Water

§ 11. Territorial Agreements

The Commission found that it had jurisdiction over the territorial agreement between a public water supply district and water corporation pursuant to subsection 247.172.5, RSMo.

§ 11. Territorial Agreements

The Commission found that the Territorial Agreement between Missouri-American Water Company and Audrain Public Water Supply District No. 1 designating exclusive service territories in Audrain County, Missouri, including within the corporate limits of the City of Mexico, Missouri, was not detrimental to the public interest with certain conditions.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Joint Application of Missouri-American Water Company and Audrain Public Water Supply District No. 1 for Approval of a Territorial Agreement Concerning Territory in Audrain County, Missouri	)))))	**File No. WO-2017-0191**

REPORT AND ORDER

Issue Date: April 6, 2017

Effective Date: May 6, 2017

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Joint Application of Missouri-American Water Company and Audrain Public Water Supply District No. 1 for Approval of a Territorial Agreement Concerning Territory in Audrain County, Missouri	)))))	**File No. WO-2017-0191**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: April 6, 2017 Effective Date: May 6, 2017

This decision approves a territorial agreement between Missouri-American Water Company (MAWC) and Audrain Public Water Supply District No. 1 (the District). The territorial agreement designates exclusive service territories in Audrain County, Missouri.

Findings of Fact

On January 10, 2017, MAWC and the District filed a Joint Application requesting approval of their territorial agreement setting out exclusive service territories in Audrain County, Missouri. The Staff of the Missouri Public Service Commission (Staff) filed its recommendation on March 17, 2017, advising the Commission that the proposed territorial agreement is not detrimental to the public interest and recommending that it be approved with certain conditions.

MAWC is a water corporation, sewer corporation, and public utility organized and existing under the laws of the State of Missouri, with its principal place of business located at 727 Craig Road, St. Louis, Missouri 63141. MAWC is engaged in providing water and sewer services to the public in portions of Missouri as a public utility under the jurisdiction of the Missouri Public Service Commission.

The District is a Missouri public water supply district, created and operating pursuant to the Revised Statutes of Missouri, Section 247.172, et seq., with the right to exclusively provide water service to a defined tract of land in Audrain County, Missouri. A portion of the District's service territory falls within the geographical limits of the City of Mexico, Missouri.

Pursuant to a franchise agreement with the City of Mexico, Missouri, and a Commission-granted certificate of public convenience and necessity, MAWC provides water service to certain customers within the city limits. The District's service territory and MAWC's service territory in the City of Mexico, Missouri, currently overlap. A dispute arose regarding the certificate granted by the Commission and each entity's right to service customers within the city limits pursuant to Sections 247.010 and 247.670, RSMo. Thus, to resolve these issues, the parties have entered into the territorial agreement.

The proposed territorial agreement, attached to the joint application, shows and describes to the extent practical the boundaries designated for the District's and MAWC's respective exclusive service areas within the city limits. All customers in Mexico, Missouri, shall remain with their current service providers with the exception of customers at: 2781, 2797, 2813, 2825, 2871, 2875, 2935, 2977, and 3100 S. Clark; and 440 Kelley Parkway. New customers will be served by MAWC.

No other regulated water service provider operates in the specific areas sought to be designated by the applicants. Staff noted in its recommendation that the joint application includes a map with the city limits designated, but it does not include a legal description as required by 4 CSR 240-3.625(1)(A). However, Staff notes that the

approval of this territorial agreement is part of the resolution of a "federal case"[1] and in Staff's opinion is not detrimental to the public interest. Therefore, Staff recommends that the applicants be given additional time to file the legal description and that the Commission's report and order include a provision requiring that MAWC revise its tariff within ten days after the effective date of the report and order.

According to the facts as evidenced in the verified application and in Staff's verified recommendation, the proposed territorial agreement is not detrimental to the public interest because it will prevent future duplication of facilities, may result in economic efficiencies and future cost savings, and may benefit the public safety. The agreement will also provide certainty for future customers regarding their water service provider and may enhance community development. Additionally, establishing these boundaries will lessen the chances of future disputes.

In addition to recommending approval of the application, Staff recommended the following conditions:

- That MAWC be required to submit, within six months from the issue date of this Report and Order, a legal description of the corporate limits of the City of Mexico as they existed on September 30, 2016, pursuant to paragraph 5.(B) of the Joint Applicant's Territorial Agreement; and

- Require MAWC to submit a First Received Certificated Area Sheet No. CA9.1 in its water tariff P.S.C. MO No. 13, or alternatively a new Original Certificated Area Sheet No. CA 9.2, within ten days after the effective date of an order from the Commission approving the territorial agreement, depicting the approved territorial agreement boundary.

[1] *Staff Recommendation for Joint Application for Approval of Territorial Agreement*, Exhibit A, p. 4.

Based on the information contained in the verified joint application and recommendation of Staff, the Commission finds that the proposed territorial agreement is not detrimental to the public interest.

Conclusions of Law

Section 247.172, RSMo, gives the Commission jurisdiction over territorial agreements concerning water service between public water supply districts and water corporations subject to Public Service Commission jurisdiction, including any subsequent amendment to such agreement. Under Section 247.172.5, the Commission may approve such a territorial agreement if the agreement in total is not detrimental to the public interest. As the Commission found in its findings of fact, the territorial agreement will not be detrimental to the public interest.

Although Section 247.172.5 RSMo, provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence.[2] Notice was given and no party requested a hearing. Therefore, no hearing is necessary.

Decision

Based on its findings of fact and conclusions of law, the Commission determines that the submitted territorial agreement between MAWC and the District is not detrimental to the public interest and shall be approved.

[2] *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

THE COMMISSION ORDERS THAT:

1. The Territorial Agreement between Missouri-American Water Company and Audrain Public Water Supply District No. 1 designating exclusive service territories in Audrain County, Missouri is approved with the conditions set out in Ordered Paragraphs 2 and 3.

2. Missouri-American Water Company shall submit, within six months from the issue date of this Report and Order, a legal description of the corporate limits of the City of Mexico as they existed on September 30, 2016, pursuant to paragraph 5.(B) of the Joint Applicant's Territorial Agreement.

3. Missouri-American Water Company shall submit a First Received Certificated Area Sheet No. CA9.1 in its water tariff P.S.C. MO No. 13, or alternatively a new Original Certificated Area Sheet No. CA 9.2 depicting the approved territorial agreement boundary, within ten days after the effective date of this Report and Order.

4. This order shall become effective on May 6, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur
and certify compliance with the
provisions of Section 536.080, RSMo.

Dippell, Senior Regular Law Judge

Dated at Jefferson City, Missouri
on this 6th day of April, 2017.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water	)	
Company for Certificates of Convenience and	)	
Necessity Authorizing it to Install, Own, Acquire,	)	**File No. WA-2017-0181**
Construct, Operate, Control, Manage and	)	Tariff No. YW-2017-0244
Maintain Water and Sewer Systems in and around	)	Tariff No. YS-2017-0245
The Village of Wardsville, Missouri.	)	

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Sewer
§2. Certificate of convenience and necessity

Water
§2. Certificate of convenience and necessity

Certificates
§21. Grant or refusal of certificate generally
The Commission found that Missouri-American Water Company's request for authority to own and operate a water and sewer system in and around the Village of Wardsville, Missouri, is necessary or convenient for the public service subject to certain conditions and requirements.

Sewer
§4. Transfer, lease and sale

Water
§4. Transfer, lease and sale
The Commission granted the application for a water company to acquire and operate the assets of a municipal water and sewer utility subject to certain conditions and requirements.

Certificates

§22. Restrictions and conditions

The Commission found that Missouri-American Water Company's request for authority to own and operate a water and sewer system in and around the Village of Wardsville, Missouri, is necessary or convenient for the public service subject to certain conditions and requirements.

§45. Water

The Commission granted the application for a water company to acquire and operate the assets of a municipal water and sewer utility subject to certain conditions and requirements.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 13th day of April, 2017.

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 Water and Sewer Systems in and Around the Village of Wardsville, Missouri	)))))	**File No. WA-2017-0181**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: April 13, 2017 Effective Date: May 13, 2017

On December 19, 2016, Missouri-American Water Company ("MAWC") filed applications with the Missouri Public Service Commission ("Commission") requesting that the Commission grant it a certificate of convenience and necessity to install, own, acquire, construct, operate, control, manage, and maintain water and sewer systems in and around the Village of Wardsville, in Cole County, Missouri. The two application cases were consolidated into the current case. The requested certificate would allow MAWC to provide water and sewer service to most of Wardsville and some of the surrounding area. MAWC also intends to acquire the water and sewer utility assets that are presently owned and operated as a municipal utility by Wardsville.

The Commission issued notice and set a deadline for intervention requests, but no requests were made. On March 13, 2017, Staff filed its recommendation to approve the transfer of assets and grant a certificate, subject to 17 conditions listed in its pleading. Additionally, Staff noted that MAWC currently has authority to provide sewer

service that includes the Wardsville area.[1] Thus, Staff opines that MAWC does not need a certificate for sewer service. However, MAWC has requested authority to charge sewer rates that are different than its current approved rates that apply to the Wardsville area. MAWC requests to continue to charge the sewer rates that the customers currently are paying. These rates are based on water usage.

Staff also indicated that there was not sufficient information to determine whether the purchase price was above or below the net book value of the Wardsville assets. On March 23, 2017, OPC filed a motion requesting that the Commission direct MAWC to file a statement indicating what its position was with regard to the treatment of an acquisition premium, if any, in this case.

On March 23, 2017, MAWC filed its response to Staff and OPC. MAWC indicated that it had no objection to Staff's recommendations. With regard to OPC's motion, MAWC stated that it would "not seek to recover an acquisition premium if any exists associated with this acquisition."[2]

No other party has objected to the applications or Staff's recommendation. Thus, the Commission will rule upon the application. No party has requested an evidentiary hearing, and no law requires one.[3] Therefore, this action is not a contested case,[4] and the Commission need not separately state its findings of fact.

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[1] The Commission granted the service area that includes most of Cole County, including the Wardsville area, to Capital Utilities, Inc. in Case No. SA-92-195. AquaSource/CU, Inc. merged with Capital Utilities, Inc. as approved in Case No. WM-99-238. AquaSource/CU, Inc. transferred assets and the service area to AquaMissouri, Inc. as approved in Case No. WN-2004-0285. AquaMissouri, Inc. transferred assets and the service area to MAWC as approved in Case No. WO-2011-0168.
[2] *Response to Staff Recommendation and OPC Motion*, Case No. WA-2017-0181 (filed March 23, 2017).
[3] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).
[4] Section 536.010(4), RSMo.

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."[5] The Commission articulated the specific 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.[6]

Based on the verified applications 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 service to the customers currently being served by Wardsville. 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 Wardsville. Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described by Staff above and MAWC's statement that it will not seek to recover an acquisition premium if one exists.

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[5] Section 393.170.3, RSMo.

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

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company is granted a certificate of convenience and necessity to provide water and sewer service in and around the Village of Wardsville as more particularly described in the Application, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:

a. Missouri-American Water Company shall apply the existing Wardsville water rates to customers within that area;

b. Missouri-American Water Company shall apply the current Wardsville sewer rates, applicable to existing and future customers in Missouri-American Water Company's existing Cole/Callaway sewer service area who are or will be connected to any of the acquired Wardsville sewer systems;

c. Missouri-American Water Company shall submit tariff sheets to become effective before closing on the assets that include a service area map, a service area written description, and water rates applicable to water service in its Wardsville service area. These water rates should be included among the "District 1" rate pages of Missouri-American Water Company's EFIS water tariff, P.S.C. MO No. 13;

d. Missouri-American Water Company shall submit tariff sheets for sewer rates to become effective before closing on the assets and applicable to customers connected to the Wardsville sewer systems into Missouri-American Water Company's sewer tariff, P.S.C. MO No. 10. These tariff sheets should apply to sewer service in Missouri-American Water Company's Cole/Callaway sewer service area or into a new consolidated sewer tariff that may be filed by Missouri-American Water Company and become effective that will have replaced Missouri-American Water Company's current tariff, P.S.C. MO No. 10;

e. Missouri-American Water Company shall notify the Commission of closing on the assets within five days after such closing;

f. If the closing on the water and sewer system assets does not take place within 30 days following the effective date of the Commission's order approving such, Missouri-American Water

Company shall submit a status report within five days after this 30-day period regarding the status of closing and additional status reports within five days after each additional 30-day period until closing takes place, or until Missouri-American Water Company determines that the transfer of the assets will not occur;

g. If Missouri-American Water Company determines that a transfer of the assets will not occur, it shall notify the Commission no later than the date of the next status report, as addressed above, after such determination is made. In addition, Missouri-American Water Company shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Wardsville area in its water tariff and rate sheets applicable to customers in the Wardsville area in both the water and sewer tariffs;

h. Missouri-American Water Company shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

i. Missouri-American Water Company shall provide an example of its actual communication with the Wardsville service area customers regarding its acquisition and operations of the Wardsville water and sewer system assets, and how customers may reach Missouri-American Water Company, within ten days after closing on the assets;

j. Missouri-American Water Company shall obtain from Wardsville, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, depreciation reserve balances, documentation of contributions-in-aid-of-construction (CIAC) transactions, and any capital recovery transactions;

k. Missouri-American Water Company shall provide in its next general rate case an analysis documenting its proposed rate base values for Wardsville assets, including an appropriate offset for associated CIAC;

l. The Commission specifically makes no finding that would preclude it from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the certificate of convenience and necessity to Missouri-American Water Company, including expenditures related to the certificated service area, in any later proceeding;

m. Missouri-American Water Company shall ensure adherence to Commission Rules at 4 CSR-13 with respect to Wardsville customers;

n. Missouri-American Water Company shall include the Wardsville customers in its established monthly reporting to the Staff Consumer & Management Analysis Unit (CMAU) on customer service and billing issues;

o. Missouri-American Water Company shall distribute to the Wardsville 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 Rules at 4 CSR 240-13, within ten days of closing on the assets;

p. Missouri-American Water Company shall provide adequate training for the correct application of rates and rules, including sewer charges, to all customer service representatives prior to Wardsville customers receiving their first bill from Missouri-American Water Company; and,

q. Missouri-American Water Company shall provide to the CMAU staff a sample of ten billing statements from the first month's billing within 30 days of such billing.

2. Missouri-American Water Company is authorized to acquire the assets of the Village of Wardsville identified in the applications.

3. Missouri-American Water Company is authorized to take such other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the applications.

4. This order shall become effective on May 13, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Senior Regular 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 Approval	)	**File No. ET-2016-0246**
Of a Tariff Setting a Rate for Electric Vehicle	)	Tariff No. YE-2017-0052
Charging Stations	)	

REPORT AND ORDER

Electric

§9. Jurisdiction and powers of the State Commission

The Commission found that it did not have statutory authority to regulate electric vehicle charging stations, and directed the company to file an amended tariff designating electricity for electric vehicle charging as not constituting the sale for resale of electricity.

§45.1. Electric vehicle charging stations

The Commission found that it did not have statutory authority to regulate electric vehicle charging stations, and directed the company to file an amended tariff designating electricity for electric vehicle charging as not constituting the sale for resale of electricity.

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	)	**File No. ET-2016-0246**
Of a Tariff Setting a Rate for Electric Vehicle	)	Tariff No. YE-2017-0052
Charging Stations	)	

REPORT AND ORDER

Issue Date: April 19, 2017

Effective Date: May 19, 2017

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 a Tariff Setting a Rate for Electric Vehicle Charging Stations	))))	**File No. ET-2016-0246** Tariff No. YE-2017-0052

APPEARANCES

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI:

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CHARGEPOINT, INC.:

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KANSAS CITY POWER & LIGHT COMPANY and KCP&L GREATER MISSOURI OPERATIONS COMPANY:

James M. Fischer, Fischer & Dority, P.C., 101 Madison Street, Suite 400, Jefferson City, Missouri 65101.

Robert J. Hack and **Roger W. Steiner**, Kansas City Power & Light Company, 1200 Main Street, 16th Floor, Kansas City, Missouri 64105.

SIERRA CLUB AND NATURAL RESOURCES DEFENSE COUNCIL:

Henry B. Robertson, Great Rivers Environmental Law Center, 319 N. Fourth Street, Suite 800, St. Louis, Missouri 63102.

Joseph Halso, 1536 Wynkoop Street, Suite 312, Denver, Colorado 80202.

CONSUMERS COUNCIL OF MISSOURI:

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

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On August 15, 2016, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") filed an application requesting that the Missouri Public Service Commission approve a tariff authorizing a pilot program to install and operate electric vehicle ("EV") charging stations at locations within Ameren Missouri's service area along the U.S. Interstate 70 corridor between St. Louis and Boonville, Missouri, and in Jefferson City, Missouri. The Commission granted timely requests to intervene filed by the Midwest Energy Consumers Group; the Missouri Department of Economic Development – Division of Energy; Natural Resources Defense Council; Brightergy, LLC; ChargePoint, Inc.; Sierra Club; Consumers Council of Missouri; and the Missouri Industrial Energy Consumers.

On October 6, 2016, after considering the recommendations of the parties, the Commission found that the original tariff filed by Ameren Missouri was not adequate because its rate structure, based on 15-minute intervals of time, discriminated against electric vehicle drivers with less powerful onboard charging devices. The Commission rejected that tariff, but authorized Ameren Missouri to file a new tariff to correct that problem. On October 7, 2016, Ameren Missouri filed a revised tariff under Tariff Tracking No. YE-2017-0052 with an effective date of November 6, 2016. The Commission subsequently suspended the effective date of that tariff until June 4, 2017 in order to conduct a hearing regarding Ameren Missouri's application.

The Commission held an evidentiary hearing on January 12 and 31, 2017.[1] During the evidentiary hearing, the parties presented evidence relating to some or all of the following unresolved issues previously identified by the parties:

1. Does the Commission have jurisdiction to regulate utility-owned and operated electric vehicle charging stations operated in a utility's service area?

2. Are there public benefits realized from the installation of electric vehicle charging stations, specifically if the Commission were to approve Ameren Missouri's proposed pilot project?

3. Is Ameren Missouri acting as a regulated utility in offering this service?

4. Does the pilot design proposed by Ameren Missouri impact competition with third parties for charging station sites in its service territory?

5. Does Ameren Missouri's proposed tariff represent the proper rate design for its EV charging station pilot project?

6. Should the cost of installing the electric vehicle charging stations be booked below the line or above the line and recovered from ratepayers?

Final post-hearing briefs were filed on February 28, 2017, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.[2]

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed

[1] Transcript, Vols. 2-4. The Commission admitted the testimony of 12 witnesses and 28 exhibits into evidence during the evidentiary hearing.
[2] "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Union Electric Company d/b/a Ameren Missouri is an electrical corporation and public utility that provides electric service through its tariffs in Missouri.[3]

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

3. The Office of the Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo[5], and by Commission Rule 4 CSR 240-2.010(10).

4. In its application and proposed tariff, Ameren Missouri proposes to deploy an electric vehicle charging station pilot project ("pilot project") aimed at investigating the merits of providing an EV charging service intended for use by both the long-distance driving public and the communities that are situated along long-distance driving corridors.[6]

5. The pilot project involves the identification of six charging station site locations, each of which will feature both direct current (DC) fast-charging and standard Level 2 alternating current (AC) charging stations for public use. These charging stations will be located in selected communities along the U.S. Interstate 70 ('I-70") corridor between Boonville and St. Louis City – respectively the western-most and eastern-most

[3] Ex. 6 and 7.
[4] Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).
[5] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[6] Ex. 1, Nealon Direct, p. 4.

reaches of the Ameren Missouri service territory along this route – plus an additional charging station in Jefferson City.[7]

6. The EV charging stations are designed to be between 20 to 45 miles apart in order to serve both the local communities and long-distance drivers traveling along I-70. The charging stations would accommodate all currently available EVs by providing access to all industry-standard charging plugs.[8]

7. Ameren Missouri would obtain an easement for installation of the charging station from each of the site hosts, who have not yet been selected.[9]

8. The average cost to procure equipment, install, and commission each of the EV charging stations along I-70 and in Jefferson City is estimated at $95,000. The $95,000 per charging station is comprised of an average $15,000 Ameren Missouri line extension and transformation cost, an average $60,000 hardware cost for charging equipment and an outdoor electric panel, and an average $20,000 cost for civil construction, hardware installation and site commissioning.[10]

9. The pilot project proposed by Ameren Missouri focuses on plug-in electric vehicles which can be charged with electricity from the electric grid. This includes both battery electric vehicles that rely entirely upon electricity and plug-in hybrid electric vehicles that rely upon electricity for daily driving needs, but use gasoline for longer trips.[11] Ameren Missouri has deliberately chosen to include compatible charging plugs for both types of vehicles to provide a public charging service that all EV owners can utilize.[12]

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[7] Ex. 1, Nealon Direct, p. 4.
[8] Ex. 1, Nealon Direct, p. 5.
[9] Transcript, Vol. 2, p. 144.
[10] Ex. 1, Nealon Direct, p. 15.
[11] Ex. 550, Garcia Surrebuttal, p. 6.
[12] Ex. 2, Nealon Surrebuttal, p. 9.

10. Charging an electric vehicle is analogous to filling a conventional vehicle's fuel tank with gasoline. An electric vehicle is plugged into the electric grid so that electricity can flow through wires and charge the battery.[13] Charging an EV requires transforming the AC electricity from the utility to DC power stored in the battery for use by the vehicle.[14]

11. EV charging stations consist of specialized equipment, such as the physical charging station box with a cord and plug to attach to an electric vehicle, computer software within the station, and a network that communicates via Wi-Fi or a cellular network to a cloud that allows for monitoring by the station owner and locating the station by an EV driver.[15] The station looks similar to a gasoline fuel pump at a gas station and is connected to an electrical panel to obtain electricity.[16] EV drivers can utilize the EV station network through a single mobile cell phone app for real time station information and payment and support services.[17] EV drivers can pay for their purchase by swiping a magnetic card, such as a credit card.[18]

12. Ameren Missouri is in discussions with possible site hosts for the EV charging stations within one quarter mile to three miles from I-70. The potential sites are located close to 24/7 amenities and conveniences that EV drivers and passengers could use while the vehicle battery is charging. Ameren Missouri's goal is to mimic the experience of fueling a gasoline-powered vehicle at a gas station.[19]

13. The AC Level 2 charging industry standard is for charging equipment that uses 240V, split-phase alternating current circuit and connects to the car through a SAE

[13] Ex. 500, Jester Rebuttal, Schedule SC-2, p. 29.
[14] Transcript, Vol. 2, p. 234.
[15] Transcript, Vol. 2, p. 346.
[16] Ex. 1, Nealon Direct, Schedule mjn-4, p. 17; Ex. 500, Jester Rebuttal, p. 28.
[17] Ex. 300, Smart Rebuttal, p. 3.
[18] Transcript, Vol. 2, p. 161.
[19] Transcript, Vol. 2, p. 161-164.

J1772 plug. AC Level 2 charging allows up to 80 amps of current, which would transfer up to 19 kW power but the on-board chargers (which convert AC to DC power) in most vehicles cannot accept that throughput, so common installations are 40 amps or less. Each hour of charging at maximum current for AC Level 2 could add approximately 60 miles to vehicle range but vehicle and circuit limits make 20 to 30 miles per hour of charging more representative.[20]

14. DC fast charging is accomplished by connecting a high-amperage direct current directly to the vehicle battery, unlike the AC chargers which go through an AC-DC conversion on-board the vehicle. In this case, the charger that turns the AC electricity available from the grid into the DC electricity required to charge the battery is located in the charging station equipment rather than within the car. Fast chargers typically are able to transfer energy at the rate of 44 kW, which can add range to a typical compatible vehicle at a rate of more than 100 miles per hour of charging.[21]

15. Per the revised tariff filed on October 7, 2016, Ameren Missouri is proposing to charge $0.17 per minute of plug-in time for DC fast-charging and $0.20 per kilowatt-hour for Level 2 AC charging.[22]

16. Ameren Missouri has a provision in one of its tariffs that prohibits the resale of electricity. That provision was originally included to prevent situations like a subdivision developer or apartment owner from reselling electricity to houses or apartments. The prohibition was not designed to apply to charging electric vehicles.[23]

[20] Ex. 500, Jester Rebuttal, p. 22.
[21] Ex. 500, Jester Rebuttal, p. 22-23; Schedule SC-2, p. 31.
[22] Ex. 2, Nealon Surrebuttal, p. 2.
[23] Transcript, Vol. 2, p. 234; Ameren Missouri tariff Schedule No. 6, Original Sheet No. 137.

17. There are currently 1,025 public EV charging ports in Missouri supporting 3,092 registered EV drivers. ChargePoint has at least 37 public charging ports in Ameren Missouri's service territory.[24] These ports and EV charging stations are not regulated by the Commission.

18. Kansas City Power & Light Company is developing the Clean Charge Network, which is an initiative to install and operate more than 1,000 EV charging stations throughout the Kansas City region. That company does not have an approved tariff in Missouri for its operation of those EV charging stations as a utility service.[25]

III. Conclusions of Law and Discussion

Ameren Missouri is an "electrical corporation"[26] and "public utility"[27] and, thus, subject to the supervision of the Commission.[28] As an electrical corporation, Ameren Missouri must obtain the permission and approval of the Commission before beginning construction of an electric plant[29] and establishing by tariff a new rate or charge.[30] Since Ameren Missouri brought the application for approval of a tariff, it bears the burden of proof.[31] The burden of proof is the preponderance of the evidence standard.[32] In order to

[24] Ex. 300, Smart Rebuttal, p. 5-6; Ex. 302.
[25] Ex. 650, Rush Rebuttal, p. 6.
[26] Section 386.020(15), RSMo.
[27] Section 386.020(43), RSMo.
[28] Sections 393.140(1) and 386.250(1), RSMo.
[29] Section 393.170.1, RSMo.
[30] Sections 393.150.1 and 393.140(11), RSMo.
[31] Section 393.150.2, RSMo; "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).
[32] *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).

meet this standard, Ameren Missouri must convince the Commission it is "more likely than not" that its allegations are true.[33]

The threshold question for determination is whether the Commission has jurisdiction to regulate utility-owned and operated electric vehicle charging stations operated in a utility's service area. The Commission "is an administrative agency with limited jurisdiction and the lawfulness of its actions depends directly on whether it has statutory power and authority to act."[34] The Commission's statutory authority to regulate the EV charging stations proposed by Ameren Missouri depends on whether those charging stations constitute "electric plant", which is defined, in part, as "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."[35]

The Commission finds that EV charging stations are not "electric plant" as defined in the statute because they are not used for furnishing electricity for light, heat, or power. EV charging stations are facilities that use specialized equipment, such as a specific cord and vehicle connector, to provide the service of charging a battery in an electric vehicle. The battery is the sole source of power to make the vehicle's wheels turn, the heater and air conditioner operate, and the headlights shine light. The charging service is the product being sold, not the electricity used to power the charging system. By analogy, a laundromat uses electricity to provide clothes drying services, but that does not mean the laundromat's

[33] *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).
[34] *State ex rel. Gulf Transp. Co. v. Public Service Commission of State*, 658 S.W.2d 448, 452 (Mo. App. 1983).
[35] Section 386.020(14), RSMo.

dryers are electric plant, or that the laundromat should be regulated by the Commission. EV charging stations are not "electric plant" and, therefore, the Commission lacks statutory authority to regulate their operation. To rule otherwise would conceivably assert jurisdiction over other similar battery-charging services, such as smart phone charging stations or kiosks, RV parks that allow vehicles to connect to the park's electricity supply, or airports that connect planes to a hangar's electricity supply while parked, which the Missouri General Assembly could not have intended.

This conclusion is further buttressed by an understanding of the Commission's organic act, the statutes establishing the Commission and its mission, which illuminate the fundamental difference between a monopoly and a business operating in a competitive economic environment.[36] Natural monopoly industries have high fixed costs and capital investment costs that serve as barriers to entry of new competition.[37] Even if new competition was able to surmount these barriers, the costs of doing so would be significant. The Commission was established to prevent this unnecessary duplication of service on the theory that such over-crowding of the field will eventually be a burden on the public.[38] These laws are based on a policy to substitute regulated monopoly for destructive competition in order to protect the public.[39] However, it is designed as a practical system to promote the public good, and the facts of each case must be considered in applying it.[40]

[36] *State ex rel. Gulf Transport Co. v. Public Service Commission*, 658 S.W.2d 448, 456 (Mo. App. 1983).
[37] *Id*.
[38] *State ex rel. City of Sikeston v. Public Service Commission of Missouri*, 336 Mo. 985, 997, 82 S.W.2d 105, 109 (1935).
[39] *State ex rel. Elec. Co. of Missouri v. Atkinson*, 275 Mo. 325, 204 S.W. 897, 899 (1918).
[40] *Id.*

There may be situations where competition could serve a useful public purpose if the public is protected and it does not result in economic waste.[41]

The Commission concludes that Ameren Missouri has not demonstrated that the business of EV charging stations needs to be regulated in order to protect the public. Currently, EV drivers are not captive customers being served by a single utility, but have a choice among several providers of EV charging services.

Ameren Missouri may own and operate EV charging stations in Missouri, but it may only do so on an unregulated basis without including those charging stations in its rate base or seeking recovery from ratepayers for any of the costs associated with the construction or operation of those charging stations. However, Ameren Missouri may include in rate base any equipment, such as distribution lines, transformers, and meters, necessary to provide electric service to an owner of an EV charging station, whether or not that owner is affiliated with Ameren Missouri.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission determines that the substantial and competent evidence in the record supports the conclusion that Ameren Missouri has not met, by a preponderance of the evidence, its burden of proof to demonstrate that the Commission has the statutory authority to approve Ameren Missouri's tariff authorizing the EV charging station pilot project. Therefore, the Commission will deny the Ameren Missouri application and reject the tariff.

[41] *State ex rel. City of Sikeston v. Public Service Commission of Missouri*, 336 Mo. 985, 998, 82 S.W.2d 105, 110 (1935).

The Commission will direct Ameren Missouri to accumulate data regarding the appropriate electric rate to charge owners of EV charging stations and provide that data during its next general rate case. In addition, the Commission will also direct Ameren Missouri to file an amended tariff to revise the existing prohibition on the resale of electricity in order to clarify that EV charging stations are not reselling electricity. Since the Commission has determined that it lacks statutory authority over the proposed EV charging stations, and this issue is dispositive in the case, it is unnecessary for the Commission to address the remaining disputed issues proposed by the parties.

THE COMMISSION ORDERS THAT:

1. Union Electric Company d/b/a Ameren Missouri's application for approval of a tariff authorizing a pilot program to install and operate electric vehicle charging stations filed on August 15, 2016, is denied.

2. The tariff submitted under Tariff Tracking No. YE-2017-0052 on October 7, 2017, is rejected. The specific tariff sheets rejected are:

MO. P.S.C. Schedule No. 6
1st Revised Sheet No. 166, Canceling Original Sheet No. 166
Original Sheet No. 166.1

3. Union Electric Company d/b/a Ameren Missouri shall accumulate data regarding the appropriate electric rate to charge owners of EV charging stations and provide that data during its next general rate case.

4. Union Electric Company d/b/a Ameren Missouri shall submit an amended tariff to Schedule No. 6, Original Sheet No. 137 as a thirty-day tariff filing with the changes proposed in the exemplar tariff attached as Appendix D to Ameren Missouri's reply brief in this case.

5. This order shall become effective on May 19, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Stoll, Kenney, and Coleman, CC., concur,
Hall, Chm., C., concurs, with separate concurring opinion to follow,
Rupp, C., dissents;
and certify compliance with the provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 19th day of April, 2017.

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	)	File No. ET-2016-0246
Of a Tariff Setting a Rate for Electric Vehicle	)	Tariff No. YE-2017-0052
Charging Stations	)	

COMMISSIONER SCOTT T. RUPP'S DISSENTING OPINION

Last week the Missouri Public Service Commission (PSC), on a vote of 4-1, promulgated an order stating that electric vehicle charging stations (EVCS) will not be regulated in the state of Missouri. There was one dissenting vote, and I cast it.

I feel that EVCSs should be regulated when they are owned and operated by a regulated utility. A position held by several other states' public service commissions who have seriously considered this issue and argued by the Sierra Club and Natural Resources Defense Counsel in this proceeding.

The reason this issue was before the PSC is that the popularity of EVs is growing as well as the distances traveled between charges. In Missouri, when you get out of the urban areas of St. Louis and Kansas City, there are very long gaps between charging stations (if they exist at all), increasing the range anxiety of EV drivers. The proposal put forward by Ameren Missouri sought to build EV stations along the Interstate 70 corridor, especially in more rural areas where EVCS do not currently exist.

Ameren's goal was to expand the network of charging stations to support the increasing market for EVs and to have them regulated to make them economically feasible for the utility to install and maintain. However, I believe the order that was passed by the PSC does not accomplish that goal.

The order that passed, of which I opposed, was predicated on the belief that a market for EVCS currently exists in Missouri. It states that a utility must find a third party partner who will pay the costs to install and maintain a charging station. To put real numbers to this situation, according to the evidence in the record charging equipment costs $60,000, plus another $20,000 for construction/installation, and several thousand per year of maintenance. In other words, $80,000 upfront costs plus several thousand per year in maintenance. That is a massive capital cost in hopes of making a small margin on the price of electricity, on a minuscule volume of customers, even if those customers patronized your business while their car was charging.

There is little evidence of a competitive EVCS market along these corridors let alone in Ameren's service territory or the state of Missouri. Of the 19 EVCS that exist, 12 of them provide free charging. Of the current 19 EVCSs along the I-70 corridor Ameren wishes to build its EVCSs, 15 are located in St. Louis City (urban) or St. Louis County (suburban).

I believe that it will be tough to find willing partners in rural areas, that would be solely dependent on EV drivers to stop and charge their vehicle on a cross state trip, to upfront the capital costs for the construction of an EV charging station. That means that the goal of expanding the EV charging infrastructure will not penetrate outside of the urban areas of our state and that our actions as a PSC will not encourage nor support EV adoption.

Not regulating EVCSs owned by electric corporations will stifle the development of the EV market in Missouri and consequently the EVCS market as well. The current lack of EVCSs particularly outside the major metropolitan areas of the state limits EV

adoption while the lack of EVs acts as a disincentive for competitive enterprises from building an EVCS network.

Today, electric corporations are the only businesses that have the market incentives to invest in an EVCS network. Not regulating EVCSs owned by electric corporations will mean higher marginal rates for all ratepayers. EV load can increase utility sales without incurring significant infrastructure costs, thereby spreading fixed costs across greater sales, lowering the marginal cost of electricity for all ratepayers—whether or not they own an EV.

I firmly believe that if our state wants to create a strong infrastructure of EVCSs that we need to regulate our utilities in the buildout of EVCSs across their footprint while allowing third-party entrepreneurs to compete in that space as well. With that approach, Missouri will realize a stronger, faster, and larger EVCS network.

Respectfully Submitted,

Commissioner Scott T. Rupp

Dated at Jefferson City, Missouri
This 27th day of April, 2017

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light	)	**File No. ER-2016-0285**
Company's Request for Authority to Implement a	)	Tariff No. YE-2017-0004
General Rate Increase for Electric Service	)	Tariff No. YE-2017-0005

REPORT AND ORDER

Affirmed in Part, Reversed in Part, and Remanded: *Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service v. Missouri Public Service Commission,* 557 S.W.3d 460 (Mo. App. W.D. 2018)

Electric

§9. Jurisdiction and powers of the State Commission

The Commission finds that electric vehicle ("EV") charging stations are not "electric plant" as defined in the statute because they are not used for furnishing electricity for light, heat, or power. EV charging stations are facilities that use specialized equipment, such as a specific cord and vehicle connector, to provide the service of charging a battery in an electric vehicle.

§18. Depreciation

Depreciation refers to the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of utility plant in the course of service from causes that can be reasonably anticipated or contemplated, against which the company is not protected by insurance.

§18. Depreciation

Net salvage is a component in calculating depreciation that represents the value of equipment and materials recovered during retirements, net of the cost of removing them. Gross salvage is the amount recorded for the property retired due to the sale, reimbursement, or reuse of the property. Cost of removal is the cost incurred in connection with the retirement from service, and the disposition of, depreciable plant. Terminal net salvage is the ultimate retirement of plant facilities, including associated gross salvage and cost of removal.

§18. Depreciation

Terminal net salvage should not be included in depreciation rates because the actual cost KCPL will incur is unknown, cannot be measured, and is speculative. The Commission has previously exluded terminal net salvage from rates for exactly that reason.

§20. Rates
A fuel adjustment clause ("FAC") is a mechanism established in a general rate case that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs. KCPL's fuel and transportation costs are of such a magnitude that they would materially impact the utility, that those fuel costs are beyond the control of KCPL's management, and that its fuel costs are volatile.

§20. Rates
Class cost of service is often considered but a starting point in quantifying what part of the revenue responsibility is afforded to each customer class. Just because a company derives a higher rate of return from one class than another does not necessarily render those rates unjust or unreasonable.

§29. Rate of return
Financial analysts use variations on three generally accepted methods to estimate a company's fair rate of return on equity. The Discounted Cash Flow ("DCF") method is based on a theory that a stock's current price represents the present value of all expected future cash flows. The Risk Premium method is based on the principle that investors require a higher return to assume a greater risk. The Capital Asset Pricing Method ("CAPM") assumes the investor's required rate of return on equity is equal to a risk-free rate of interest plus the product of a company-specific risk factor, beta, and the expected risk premium on the market portfolio. No one method is any more correct than any other method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.

§31.1. Generation planning
In 2009, the General Assembly enacted SB376, codified as Section 393.1075. This legislation, known as the Missouri Energy Efficiency Investment Act ("MEEIA"), sought to eliminate any disincentives associated with the utility offering energy efficiency programs. MEEIA and Commission rules sought to eliminate this disincentive by allowing the utility to recover three things: (1) the energy efficiency program costs; (2) lost revenues associated with the energy efficiency programs; and (3) earnings opportunities associated with lost investment in future generation assets.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light	)	**File No. ER-2016-0285**
Company's Request for Authority to Implement a	)	Tariff No. YE-2017-0004
General Rate Increase for Electric Service	)	Tariff No. YE-2017-0005

REPORT AND ORDER

Issue Date: May 3, 2017

Effective Date: May 13, 2017

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light	)	**File No. ER-2016-0285**
Company's Request for Authority to Implement a	)	Tariff No. YE-2017-0004
General Rate Increase for Electric Service	)	Tariff No. YE-2017-0005

REPORT AND ORDER

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DEPUTY CHIEF REGULATORY LAW JUDGE: Ronald D. Pridgin

REPORT AND ORDER

I. Procedural History

A. Tariff Filings, Notice, and Intervention

On July 1, 2016, Kansas City Power & Light Company ("KCPL") filed tariff sheets designed to implement a general rate increase for utility service. The tariff sheets bore an effective date of July 31, 2016. In order to allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the tariff sheets were suspended until May 28, 2017.

The Commission directed notice of the filings and set an intervention deadline. The Commission granted intervention requests from the following entities: The Missouri Department of Economic Development-Division of Energy ("DE"); Midwest Energy Consumers Group ("MECG"); Missouri Industrial Energy Consumers ("MIEC"); Brightergy, LLC; Sierra Club; Consumers Council of Missouri; U.S. Department of Energy and Federal Executive Agencies ("DOE); Union Electric Company d/b/a Ameren Missouri; The City of Kansas City, Missouri; Renew Missouri; and Natural Resources Defense Council ("NRDC").

B. Local Public Hearings

The Commission conducted local public hearings in Kansas City, Marshall, and Gladstone.[1]

C. Stipulations and Agreements

On February 10, 2017, KCPL, Staff, the Office of the Public Counsel ("OPC") and MECG filed a Non-Unanimous Partial Stipulation and Agreement resolving certain accounting and revenue issues ("Stipulation"). On February 22, 2017, KCPL and Staff filed

[1] Tr. Vols. 2-5.

a Non-Unanimous Stipulation and Agreement resolving pension and other post-employment benefits costs ("Second Stipulation") (together, "Stipulations"). Although the Stipulations were not signed by all parties, they became unanimous because no party filed a timely objection.[2] The Commission approved the Stipulations on March 8, 2017.

D. Evidentiary Hearing

The evidentiary hearing was held on February 6-9, 22-23 and 28, 2017.[3] A true-up hearing was held on March 16, 2017.[4]

E. Case Submission

During the evidentiary hearing and true-up hearing held at the Commission's offices in Jefferson City, Missouri, the Commission admitted the testimony of 45 witnesses, received 194 exhibits into evidence, and took official notice of certain matters. Post-hearing briefs were filed according to the post-hearing procedural schedule. The final post-hearing briefs were filed on April 4, 2017, and the case was deemed submitted for the Commission's decision on that date.[5]

[2] Commission Rule 4 CSR 240-2.115(2).
[3] Tr. Vols. 6-13.
[4] Tr. Vols. 14-15.
[5] "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

II. General Matters

A. General Findings of Fact

1. Kansas City Power & Light Company ("KCPL"), founded in 1882, is a wholly-owned subsidiary of Great Plains Energy Incorporated, both of which are headquartered in Kansas City, Missouri.[6]

2. The Office of the Public Counsel ("OPC") is a party to this case pursuant to Section 386.710(2), RSMo[7], and by Commission Rule 4 CSR 240-2.010(10).

3. The Staff of the Missouri Public Service Commission ("Staff") is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 4 CSR 240-2.010(10).

4. KCPL provides electric service to approximately 527,000 customers, including approximately 465,200 residences, in the Kansas City metropolitan area and surrounding cities.[8]

5. KCPL's base load generating capacity consists of ownership in four large coal-fired generating stations that generate over 2,500 MW, the Wolf Creek nuclear power generating station, 1,200 MW of natural gas and oil-fired peaking capacity, and 749 MW of wind generating capacity.[9] KCPL has an additional 120 MW of wind generating capacity that was expected to begin at the end of 2016, and another 180 MW expected to begin before the end of 2017. KCPL operates and maintains approximately 12,000 miles of distribution lines and 1,800 miles of transmission lines to serve its customers.[10]

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[6] Ex. 125, p. 3.
[7] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[8] Ex. 200, p. 2.
[9] Ex. 125, p. 4.
[10] *Id.*

6. The proposed tariffs filed by KCPL in this case were designed to generate an aggregate revenue increase of approximately $90.1 million, or 10.7 percent, based on the current Missouri jurisdictional base retail revenue of $836.5 million.[11] At true-up, KCPL revised its rate request to $65.15 million.[12]

7. The revenue requirement calculation can be identified by a formula as follows:[13] Revenue Requirement = Cost of Providing Utility Service or RR= O + (V - D) R where,

RR	=	Revenue Requirement;
O	=	Operating Costs; (such as fuel, payroll, maintenance, etc. Depreciation and Taxes);
V	=	Gross Valuation of Property Used for Providing Service;
D	=	Accumulated Depreciation Representing the Capital Recovery of Gross Property Investment.
(V – D)	=	Rate Base (Gross Property Investment less Accumulated Depreciation = Net Property Investment)
R	=	Overall Rate of Return or Weighted Cost of Capital
(V - D) R	=	Return Allowed on Net Property Investment.

8. A test year is a historical year used as the starting point for determining the basis for adjustments that are necessary to reflect annual revenues and operating costs in calculating any shortfall or excess of earnings by the utility. Adjustments, such as annualization and normalization, are made to the test year results when the unadjusted results do not fairly represent the utility's most current annual level of existing revenue and operating costs.[14]

9. The test year for this case is the twelve months ending December 31, 2015, updated to June 30, 2016.[15]

[11] Ex. 130, p. 5.
[12] Ex. 173, p. 1.
[13] Ex. 206, p. 6.
[14] Ex. 200, pp. 3-4.
[15] *Id.* at 3.

10. The Commission also ordered a true-up period ending December 31, 2016, in order to account for any significant changes in KCPL's cost of service that occurred after the end of the test year period but prior to the tariff operation of law date.[16]

11. A normalization adjustment is an adjustment made to reflect normal, on-going operations of the utility. Revenues or costs that were incurred in the test year that are determined to be atypical or abnormal will get specific rate treatment and generally require some type of adjustment to reflect normal or typical operations. The normalization process removes abnormal or unusual events from the cost of service calculations and replaces those events with normal levels of revenues or costs.[17]

12. 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.[18]

13. The Commission finds that any given witness' qualifications and overall credibility are not dispositive as to each and every portion of that witness' testimony. The Commission gives each item or portion of a witness' testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.[19]

14. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to

[16] *Id.*
[17] *Id.* at 3-4.
[18] *Id.* at 4.
[19] Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).

that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.[20]

B. General Conclusions of Law

KCPL is an "electrical corporation" and a "public utility" as defined in Sections 386.020(15) and 386.020(43), RSMo, respectively, and as such is subject to the personal jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. The Commission's subject matter jurisdiction over KCPL's rate increase request is established under Section 393.150, RSMo.

Sections 393.130 and 393.140, RSMo, mandate that the Commission ensure that all utilities are providing safe and adequate service and that all rates set by the Commission are just and reasonable. Section 393.150.2, RSMo, makes clear that at any hearing involving a requested rate increase the burden of proof to show the proposed increase is just and reasonable rests on the corporation seeking the rate increase. As the party requesting the rate increase, KCPL bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, KCPL must meet the preponderance of the evidence standard.[21] In order to meet this standard, KCPL must

[20] 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).

[21] *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

convince the Commission it is "more likely than not" that KCPL's proposed rate increase is just and reasonable.[22]

In determining whether the rates proposed by KCPL are just and reasonable, the Commission must balance the interests of the investor and the consumer.[23] In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.[24]

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

> What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[25]

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[22] *Holt v. Director of Revenue, State of Mo*., 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999*); Rodriguez v. Suzuki Motor Corp*., 936 S.W.2d 104, 109-111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).
[23] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).
[24] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).
[25] *Bluefield,* at 692-93.

The Supreme Court has further indicated:

> '[R]egulation does not insure that the business shall produce net revenues.' But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[26]

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

> Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.[27]

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

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' … Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.[28]

[26] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).
[27] *Federal Power Commission v. Natural Gas Pipeline Co*. 315 U.S. 575, 586 (1942).
[28] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

III. Disputed Issues

A. Commission issues

1. *Installation of AMI smart meters for residential and commercial customers*
2. *Plug-in Electric Vehicle Rate*
3. *Optional Residential Time-of-Use rates (hourly) and Time-of-Day rates*
4. *PACE-Property Assessed Clean Energy Programs*
5. *PAYS-Pay As You Save Programs*
6. *Infrastructure Efficiency Tariff*

Findings of Fact

15. Demand response rates (sometimes also called "time-differentiated rates") include a broad category of rate designs. In general, these rates are used as part of a strategy to promote customer control of usage and shift or reduce peak demand.[29]

16. In general, Time-of-Use ("TOU") and Time-of-Day ("TOD") rates define certain time periods as "on-peak" or "off-peak" (and perhaps "shoulder"), with charges that vary depending on these time periods.[30]

17. For optional Residential Time-of-Use rates (hourly) and Time-of-Day rates, KCPL and Staff are working to design a program as follows:

> • Identify a number of premises served on a given distribution circuit, preferably one that is experiencing load growth from existing premises, as opposed to one experiencing load growth due to additions of additional premises taking service;
>
> • Install double-read meters consistent with a pre-determined program budget;
>
> • Customers in the study area would continue to be billed on the applicable rate using a manual billing process, but a peak time rebate would be developed and credited against bills. Specific times for the rebate would depend on the load characteristics of the studied circuit, but late afternoon and early evening hours during the summer would be anticipated to be the applicable time period. This also coincides

[29] Ex. 800, p.6.
[30] *Id.*

with above-average market prices for energy, and the time of day and year typically associated with RTO capacity requirements;

- Study whether the application of a peak time rebate had an impact on delaying the need for distribution system upgrades. The needs of adequately serving the impacted customers would come before the prioritization of this study, such that any necessary upgrades would be made and not unreasonably delayed.[31]

18. Property Assessed Clean Energy ("PACE") financing is designed to make payments for home improvement energy efficiency measures affordable by offering a fixed interest rate that is payable over an extended period of time. With residential PACE programs, home improvement energy efficiency measures such as HVAC, solar, windows and doors, roofing, air sealing and insulation are permanently installed and assessed to the property, and the assessment is designed to transfer with the home.[32]

19. Pay As You Save® ("PAYS®") is a market-based system that enables utility customers to purchase and install cost-effective energy efficiency upgrades or distributed renewable energy assets through a voluntary program that assures immediate net savings to customers. The idea behind PAYS® is for energy-saving upgrades to be installed in a customer's home or building, but the utility pays the up-front cost of the installed energy-saving measures. To recover its costs, the utility puts a fixed charge on the customer's electric bill that is significantly less than the estimated energy savings from the upgrades. Therefore, the customer sees immediate savings by incurring less expense for energy while paying a fixed charge that is below the total estimated energy savings. Once the utility recovers its costs, the obligation of the customer to pay ends.[33]

[31] *Id*. at 8.
[32] Ex. 203, p. 9.
[33] *Id*. at 10, 11.

20. Currently there are no Missouri investor owned utilities participating in the PAYS® system. As a result of the Missouri Energy Efficiency Investment Act (**"**MEEIA**"**) statewide collaborative process, the idea of on-bill financing is being researched and evaluated.[34]

21. The Commission's directed inquiry for an infrastructure tariff is specifically focused on geographically-specified cost causation. This requires a level of data not currently available to Staff, and a set of assumptions not typically made in designing rates.[35]

22. As discussed in its report in File No. EW-2016-0041, and consistent with GMO's expressed desire in File No. ER-2016-0156 for consistency in facility extension tariff provisions across the KCPL and GMO certificated areas, Staff recommends that KCPL modify its facility extension tariff provisions to more fully consider the incremental costs a customer causes to a system in determining how much, if any, customer advance is required.[36]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission orders KCPL to consider whether to incorporate PACE and PAYS® programs in its next Missouri Energy Efficiency Investment Act ("MEEIA") filing. KCPL shall also replace its current line extension tariff with one that is identical to or substantially similar to the line extension tariff used by GMO. In its next rate case, KCPL

[34] *Id*. at 11.
[35] *Id*. at 15.
[36] *Id*.

shall file a line extension tariff designed to account for geographic areas where there is underutilized distribution infrastructure**.**

B. Cost of capital

Findings of Fact

1. Return on equity

23. An essential ingredient of the cost-of-service ratemaking formula is the rate of return, which is premised on the goal of allowing a utility the opportunity to recover the costs required to secure debt and equity financing. In order to arrive at a rate of return, the Commission must examine an appropriate ratemaking capital structure, KCPL's embedded cost of debt, and KCPL's cost of common equity.[37]

24. A utility's cost of common equity is the return investors require on an investment in that company. Investors expect to achieve their return by receiving dividends and through stock price appreciation. To comply with standards established by the United States Supreme Court, the Commission must authorize a return on equity sufficient to maintain financial integrity, attract capital under reasonable terms, and be commensurate with returns investors could earn by investing in other enterprises of comparable risk. [38]

25. Financial analysts use variations on three generally accepted methods to estimate a company's fair rate of return on equity. The Discounted Cash Flow ("DCF") method is based on a theory that a stock's current price represents the present value of all expected future cash flows. In its simplest form, the Constant Growth DCF model expresses the cost of equity as the discount rate that sets the current price equal to

[37] Ex. 200, p. 9.
[38] *Id*. at 10.

expected cash flows.[39] The analysts also use variations of the DCF model including the multi-stage growth DCF and the sustainable growth DCF.[40]

26. The Risk Premium method is based on the principle that investors require a higher return to assume a greater risk. Common equity investments have greater risk than bonds because bonds have more security of payment in bankruptcy proceedings than common equity, and the coupon payments on bonds represent contractual obligations.[41]

27. The Capital Asset Pricing Method ("CAPM") assumes the investor's required rate of return on equity is equal to a risk-free rate of interest plus the product of a company-specific risk factor, beta, and the expected risk premium on the market portfolio.[42]

28. No one method is any more correct than any other method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.[43]

29. Three financial analysts used these models, and offered recommendations regarding an appropriate cost of capital in this case. Robert B. Hevert testified on behalf of KCPL. Hevert is Partner at Scott Madden, Inc.[44] He holds a Bachelor of Science degree in Finance from the University of Delaware and a Master of Business Administration with a concentration in finance from the University of Massachusetts. He also holds the Chartered Financial Analyst designation.[45]

[39] Ex. 127, p. 16.
[40] Ex. 650, pp. 30-32.
[41] *Id.* at 40.
[42] *Id.* at 47.
[43] Ex. 127, pp. 11, 15-16.
[44] *Id.*, Attachment A.
[45] Ex. 127, p. 1.

30. Hevert recommends the Commission allow KCPL a return on equity of 9.9 percent, within a recommended range of 9.75 percent to 10.50 percent.[46]

31. Michael Gorman testified on behalf of Missouri Industrial Energy Consumers ("MIEC") and Midwest Energy Consumers Group ("MECG"). Gorman is a consultant in the field of public utility regulation and is a managing principal of Brubaker & Associates. He holds a Bachelor of Science degree in Electrical Engineering from Southern Illinois University and a Master's Degree in Business Administration with a concentration in Finance from the University of Illinois at Springfield.[47]

32. Gorman recommends the Commission allow KCPL a return on equity of 9.20 percent, within a recommended range of 8.90 percent to 9.50 percent.[48]

33. Mr. Gorman's analysis reflects the most recent events that have occurred in the financial markets. As Mr. Gorman testified about his analysis:

> "It was only recently that the Federal Funds rate did increase interest rates, in December 2016, by 25 basis points. That change, along with the change in Administration, did have an impact on utilities' security valuations. However, since that change was made on December 14, those valuations were reflected in my updated analysis and recommended return on equity range of 8.9% to 9.5% as outlined in my rebuttal testimony."[49]

34. J. Randall Woolridge testified on behalf of Staff. Wooldridge is employed as a Professor of Finance and the Goldman, Sachs & Co. and Frank P. Smeal Endowed Faculty Fellow in Business Administration in the College of Business Administration of the Pennsylvania State University. Wooldrige holds a Bachelor of Arts degree in Economics from The University of North Carolina, a Master of Business Administration from

[46] *Id.* at 60.
[47] Ex. 650, p. 1; Attachment A.
[48] Ex. 651, p. 2; Tr. Vol. 7, p. 234.
[49] Ex. 652, pp. 6-7.

Pennsylvania State University, and a Doctor of Philosophy degree in Business Administration from The University of Iowa.[50]

35. Woolridge recommends a return on equity of 8.65 percent, within a range of 7.90 percent to 8.75 percent.[51]

36. The Commission realizes that KCPL must compete with other utilities all over the country for the same capital. Therefore, the industry authorized return on equity provides a reasonableness test for the recommendations offered by the return on equity experts. A comparison of industry authorized returns on equity for electric utilities indicates that they have decreased every year since 2009. In calendar year 2016, the industry average authorized return on equity for fully litigated cases was 9.74 percent.[52] Thus, the "zone of reasonableness" for KCPL's return on equity would be 8.74 percent to 10.74 percent.[53]

37. Some utilities obviously will earn more than that average. Florida Power and Light recently was authorized a return of 10.55 percent. The North Carolina and South Carolina Commissions also recently authorized returns on equity of 9.9 and 10.1 percent, respectively. Capital will flow from lower ROE utilities to the higher.[54]

38. The lower range of Mr. Hevert's recommendation (9.75 percent) and the upper range of Mr. Gorman's recommendation (9.50 percent) are close to the average ROE authorized in 2016 by state utility commissions.[55]

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[50] Ex. 200, Appendix 1, p. 57.
[51] Ex. 200, p. 43.
[52] Ex. 155, p. 6.
[53] *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. App. 2009).
[54] Tr. Vol. 7, pp. 129-30.
[55] Ex. 155, pp. 1, 6.

39. In fact, Mr. Gorman's Risk Premium analysis shows KCPL should receive a 9.5% ROE.[56]

40. The market evidence shows that authorized returns on equity for most integrated electric utility companies has been around 9.5 percent in 2016.[57]

41. For further guidance on a proper return on equity for KCPL, the Commission notes that it awarded KCPL a return on equity of 9.5 percent in its last rate case.[58]

42. The Commission's last ROE award to KCPL is in line with the Kansas Commission's recent award of a 9.3 ROE.[59]

2. Capital structure

43. KCPL proposes to use its capital structure of 49.72% common equity and 50.28% long-term debt as of the end of the true-up period.[60]

44. In past rate cases, KCPL and its affiliate, KCPL Greater Missouri Operations Company ("GMO"), have both proposed the use of Great Plains Energy's ("GPE") consolidated capital structure for ratemaking purposes.[61]

45. Rating agencies such as Standard and Poor's ("S&P") assign credit ratings to both KCPL and GMO based on GPE's consolidated financial and business risk profile.[62]

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[56] Ex. 651, p. 29.
[57] Tr. Vol. 7, p. 265.
[58] Report and Order, *In the Matter of Kansas City Power & Light Company's Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv. & In the Matter of KCP&L Greater Missouri Operations Company's Request for Auth. to Implement A Gen. Rate Increase for Elec. Serv.*, ER-2014-0370, 2015 WL 5244724, p. 22 (Sept. 2, 2015).
[59] *Order on KCPL's Application for Rate Change*, Case No. 15-KCPE-116-RTS, p. 16 (September 10, 2015).
[60] Ex. 106, pp. 3-4; Ex,. 172, p. 2.
[61] Ex. 220, p. 2; Ex. 221, pp. 1, 5.
[62] Ex. 220, p. 2; Tr. Vol. 14, p. 1778.

46. There are no meaningful insulation measures in place that protect KCPL and GMO from their parent and therefore, KCPL's and GMO's issuer credit ratings are in line with GPE's group credit profile of "bbb+."[63]

47. Furthermore, GPE operates KCPL and GMO as a consolidated entity for GPE's advantage. This is demonstrated by GPE's use of KCPL's and GMO's dividends.[64]

48. One danger of using a subsidiary capital structure for ratemaking is that the holding company may artificially create an equity-rich subsidiary capital structure to create value for shareholders.[65]

49. The capital structure and cost of debt KCPL proposes are also inappropriate because they do not reflect how GPE intends to be capitalized for the foreseeable future.[66]

50. As of June 30, 2016, GPE's capital structure includes 50.41 percent long-term debt, 0.52 percent preferred stock, and 49.07 percent common equity. Adjusting these amounts for KCPL's redemption of the preferred stock in August, 2016, and allocating the preferred stock equally to long-term debt and common equity, the proper capital structure is 50.8 percent long-term debt and 49.2 percent common equity.[67]

3. Cost of debt

51. GPE's and KCPL's proposed cost of debt of 5.51 percent is upwardly biased due to their blending of the yield-to-maturity and simple interest/amortization methods. Blending those methods causes a double counting of issuance expenses, discounts and

[63] Ex. 221, p.4.
[64] Ex. 220, pp. 8-9; Ex. 221, p. 9.
[65] Ex. 220, pp. 3-4.
[66] Ex. 249, p. 2.
[67] *Id*. at 23.

premiums. After correcting this error, GPE's cost of debt is 5.42 percent as of June 30, 2016.[68]

52. Staff's proposed Cost of Debt of 5.42 percent, which is GPE's consolidated Cost of Debt as of June 30, 2016, is calculated correctly, with no double counting.[69]

53. KCPL claims that because GMO issues its own debt, then KCPL's subsidiary capital structure should be used because the debt issuance is evidence of separate financial management.[70]

54. The reality is that GPE has used KCPL's credit capacity to issue debt on behalf of GMO.[71]

55. Further, a lower cost of debt is appropriate because KCPL's ratepayers helped to subsidize GPE's acquisition of GMO.[72]

Conclusions of Law

In order to set a fair rate of return for KCPL, the Commission must determine the weighted cost of each component of the utility's capital structure. One component at issue in this case is the estimated cost of common equity, or the return on equity. Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized.[73] Determining a rate of return on equity is imprecise and involves balancing a utility's need to compensate investors against the need to keep prices low for consumers.[74]

[68] *Id*. at App. 2, Ex. JRW-1; Ex. 220, p. 14.
[69] *Id*. at 14.
[70] Ex. 221, p. 1.
[71] Id. at 2.
[72] Ex. 221, p. 10.
[73] See Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, Inc., p. 394 (1993).
[74] *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 574 (Mo. App. 2009).

Missouri court decisions recognize that the Commission has flexibility in fixing the rate of return, subject to existing economic conditions.[75] "The cases also recognize that the fixing of rates is a matter largely of prophecy and because of this commissions, in carrying out their functions, necessarily deal in what are called 'zones of reasonableness', the result of which is that they have some latitude in exercising this most difficult function."[76] Moreover, the United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness.[77]

Decision

The Commission finds that KCPL's current cost of equity is 9.5 percent. This return on equity is at the top of Mr. Gorman's range, near the bottom of Mr. Hevert's range, and near the average return on equity awards for 2016.

The Commission has considered other factors, such as recent indicators of growth that may suggest an increased return, and the reduction of investment risk to KCPL by approving a fuel adjustment clause, which suggests a reduced return. However, based on the competent and substantial evidence in the record, on its analysis of the expert testimony offered by the parties, and on its balancing of the interests of the company's ratepayers and shareholders, the Commission concludes that 9.5 percent is a fair and reasonable return on equity for KCPL. This rate of return will allow KCPL to compete in the capital market for the funds needed to maintain its financial health.

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[75] *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561, 570-571 (Mo. App. 1976).
[76] *Id.* 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.
[77] *State ex rel. Public Counsel v. Public Service Commission*, 274 S.W.3d 569, 574 (Mo. App. 2009). *See, In re Permian Basin Area Rate Cases,* 390 U.S. 747, 767, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968) ("courts are without authority to set aside any rate selected by the Commission [that] is within a 'zone of reasonableness' ").

The Commission further finds that using GPE's consolidated capital structure and cost of debt of 5.42 per cent as calculated by Staff are appropriate for determining KCPL's rate of return. This was—and continues to be—the most appropriate option because rating agencies such as assign credit ratings to both KCPL and GMO based on GPE's consolidated financial and business risk profile. It is GPE's capital structure and cost of debt that rating agencies and, thus, investors use to determine whether to invest in KCPL.

C. Fuel adjustment clause

1. Has KCPL met the criteria for the Commission to authorize it to continue to have an FAC?

2. Should the Commission authorize KCPL to continue to have an FAC?

Findings of Fact

56. The Commission first authorized a Fuel Adjustment Clause ("FAC") for KCPL in its *Report and Order* in File No. ER-2014-0370. The tariff sheets implementing the FAC became effective September 29, 2015. The current case is the first KCPL rate case after Commission authorization of KCPL's FAC. KCPL requests to continue the same FAC in this rate case.[78]

57. The primary features of KCPL's present FAC include:

- Two 6-month accumulation periods: January through June and July through December;
- Two 12-month recovery periods: October through September and April through March;
- Two Fuel Adjustment Rate ("FAR") filings annually, not later than February 1 and August 1;
- A 95%/5% sharing mechanism;

[78] Ex. 200, p. 161.

• FARs for individual service classifications are rounded to the nearest $0.00001, and charged on each applicable kWh billed;

• True-up of any over- or under-recovery of revenues following each recovery period with true-up amounts being included in determination of FARs for a subsequent recovery period; and,

• Prudence reviews of the costs subject to the FAC shall occur no less frequently than every eighteen months.[79]

58. KCPL's Actual Net Energy Costs continue to be relatively large. KCPL's proposed Base Energy Cost in this case represents 37 percent of KCPL's total cost to be recovered in rates. These costs continue to be volatile and beyond KCPL's control.[80]

59. Even with forecasts, coal prices are uncertain.[81]

60. OPC generally does not think the Commission should grant FACs.[82]

61. However, no party, not even OPC, advocates that KCPL should not have an FAC in this case.[83]

Conclusions of Law

A fuel adjustment clause ("FAC") is a mechanism established in a general rate case that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs.[84]

Section 386.266.1, RSMo, allows the Commission to continue an FAC for KCPL. Commission Rule 4 CSR 240-20.090(2)(C) states, in part, that:

[79] *Id*. at 161-62.
[80] Ex. 200, p. 164; Ex. 103HC, pp. 21-24.
[81] Tr. Vol. 10. p. 657.
[82] *Id* . at 632.
[83] Brief of the Office of Public Counsel, p. 5 (filed March 22, 2017) (in which OPC recommends the Commission order an FAC for KCPL).
[84] Commission Rule 4 CSR 240-20.090(1)(C).

> In determining which cost components to include in a RAM[85], the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of the cost component.

Decision

The evidence shows that KCPL's fuel and transportation costs are of such a magnitude that they would materially impact the utility, that those fuel costs are beyond the control of KCPL's management, and that its fuel costs are volatile. In addition, per statute an FAC must be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity".[86]

Permitting KCPL to continue its current FAC will assist the company in earning its authorized return on equity. The Commission concludes that KCPL has met the criteria for the Commission to authorize an FAC and, therefore, KCPL should be allowed to continue to have a fuel adjustment clause.

3. What costs should flow through KCPL's FAC?

4. What revenues should flow through KCPL's FAC?

Findings of Fact

62. KCPL has agreed that it will not request recovery of any administration charges, such as those assessed by Southwest Power Pool ("SPP"), or any Federal Energy Regulatory Commission ("FERC") or North American Electric Reliability Corporation ("NERC") assessment charges. It has further agreed that its FAC shall only recover SPP transmission expenses and any non-SPP transmission expenses calculated in the manner

[85] A "RAM" is a rate adjustment mechanism.
[86] Section 386.266 RSMo.

that was ordered in the Company's last rate case, which were termed "true purchased power costs."[87]

63. Fuel additives are currently in KCPL's FAC.[88]

64. OPC argues for "the purest definition of fuel and transportation costs" that would exclude a variety of essential elements to KCPL's FAC.[89]

65. Such a definition would be contrary to costs identified in the five subaccounts to FERC's Uniform System of Accounts ("USoA") 501 ("Fuel") currently contained in KCPL's FAC definition of fuel costs.[90]

66. OPC's proposed definition of Fuel would also mean that KCPL would be required to stop using the inventory cost of fuel system. The inventory cost is how KCPL and all other utilities subject to the USoA currently track fuel costs.[91]

67. Rather than simplify the FAC or reduce the likelihood of errors, such a change as proposed by OPC would increase the complexity of FAC accounting and require deviations from standard USoA procedures.[92]

68. The Integrated Marketplace ("IM") consists of an energy component and an operating reserve component. Those components provide ancillary services that "are required to be carried for the sake of ensuring that load is served."[93]

69. KCPL sells and purchases power "24 hours a day, 7 days a week".[94]

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[87] Brief of Kansas City Power & Light Company, pp. 24-25 (filed March 22, 2017). *See also* Order Approving Non-Unanimous Stipulation and Agreement (March 8, 2017).
[88] Tr. Vol. 8, p. 482.
[89] Ex. 305, p. 6.
[90] Ex. 142, Sch. TMR-3, p. 2.
[91] Ex. 126, pp. 8-9.
[92] *Id.* at 9-10.
[93] Tr. Vol. 8, pp. 442-43.
[94] *Id.* at 451; 510.

70. This demonstrates how all of the SPP IM costs and revenues are "inextricably joined" to permit purchase power and sales to be reflected in the FAC.[95]

71. Contrary to what OPC would prefer, Commission approved FACs include much more than just energy and capacity.[96]

72. In fact, the Commission may order features in a rate schedule designed to give incentives to improve efficiency and effectiveness of fuel and purchase power procurement activities. Those procurement activities include negotiating contracts for coal, natural gas, uranium, and oil to generate electricity.[97]

73. Staff recommends no change to the current costs and revenues flowing through the FAC.[98]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission understands OPC's philosophical objection to Fuel Adjustment Clauses. However, the Commission is persuaded by Staff's testimony that KCPL's current FAC is working, and working well.[99] Thus, the Commission will allow KCPL to continue to flow costs and revenues through its FAC as it is doing through its current FAC.

[95] Ex. 148, p. 9.
[96] Tr. Vol, 10, pp. 642-43.
[97] *Id*. at 662.
[98] Ex. 226, p. 2; *see also* Tr. Vol. 8, p. 395.
[99] Tr. Vol. 8, p. 395.

5. What is the appropriate sharing mechanism of the difference between actual and base fuel costs in KCPL's FAC?

Findings of Fact

74. OPC proposes that the sharing mechanism in KCPL's FAC should be changed from its current 95%/5% allocation method to a 90%/10% method.[100]

75. Under the current system, customers are permitted to keep only 95 percent of any decreases in fuel costs, while KCPL's recovery of additional costs is limited to 95 percent. No other electric utility in Missouri operates under OPC's proposed 90/10 FAC formula.[101]

76. Indeed, the vast majority of electric utilities in the United States are permitted to reconcile recoveries within their FACs at the 100 percent level.[102]

Conclusions of Law

Under Missouri law, the Commission is authorized to approve rate schedules for an FAC and may include "features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities".[103]

Decision

The Commission finds that allowing KCPL to keep its 95%/5% sharing mechanism is appropriate. Under this mechanism, customers would be responsible for, or receive the benefit of, 95 percent of any deviation in fuel and purchased power costs.

[100] Ex. 305, pp. 25-26.
[101] Ex. 143, pp. 44-45.
[102] *Id*. at 45.
[103] Section 386.266.1, RSMo.

That, in turn, would provide KCPL a sufficient opportunity to earn a fair return on equity, while protecting KCPL's customers by providing the company an incentive to control costs. KCPL's FAC shall include an incentive clause providing that 95 percent of any deviation in fuel and purchased power costs from the base level shall be passed to customers and 5 percent shall be retained by KCPL.

6. What FAC-related reporting requirements should the Commission impose?

Findings of Fact

77. KCPL's current FAC tariff requires costs to be identified by a three-digit FERC prime account, and as a six digit subaccount.[104]

78. In contrast, OPC's proposal would also require KCPL to list over 200 resource codes in its FAC.[105]

79. KCPL and Staff agree on the following reporting requirements, which are in KCPL's current FAC:[106]

> • As part of the information KCPL submits when it files a tariff modification to change its Fuel and Purchased Power Adjustment rate, include KCPL's calculation of the interest included in the proposed rate in electronic format with formulas intact;
>
> • Maintain at KCPL's corporate headquarters or at some other mutually-agreed-upon place and make available within a mutually-agreed-upon time for review by Staff, a copy of each and every coal and coal transportation, natural gas, fuel oil and nuclear fuel contract KCPL has that is in or was in effect for the previous four years;
>
> • Within 30 days of the effective date of each and every coal and coal transportation, natural gas, fuel oil and nuclear fuel contract KCPL enters into, provide notice to the Staff of the contract and opportunity

[104] Tr. Vol. 9, p. 662.
[105] *Id.* at 664-65.
[106] Ex. 200, p, 161, 170-71.

to review the contract at KCPL's corporate headquarters or at some other mutually-agreed-upon place;

- Provide a copy of each and every KCPL hedging policy that is in effect at the time the tariff changes ordered by the Commission in this rate case go into effect for Staff and OPC to retain;

- Within 30 days of any change in a KCPL hedging policy, provide a copy of the changed hedging policy for Staff and OPC to retain;

- Provide a copy of KCPL's internal policy for participating in the Southwest Power Pool's Integrated Market to Staff and OPC;

- Maintain at KCPL's corporate headquarters or at some other mutually-agreed-upon place and make available within a mutually-agreed-upon time for review by Staff a copy of each and every bilateral energy or demand sales/purchase contract;

- If KCPL revises any internal policy for participating in the Southwest Power Pool, within 30 days of that revision, provide a copy of the revised policy with the revisions identified for Staff and OPC to retain; and

- The monthly as-burned fuel report supplied by KCPL required by 4 CSR 3.190(1)(B) shall explicitly designate fixed and variable components of the average cost per unit burned including commodity, transportation, emission, tax, fuel blend, and any additional fixed or variable costs associated with the average cost per unit reported.

80. OPC presented credible evidence that further reporting requirements would be appropriate; namely, requirements that KPCL report FAC costs and revenues by subaccount, and that KCPL's reporting be done in accordance with FERC Order 668.[107]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

[107] Ex. 306, pp. 22-23.

Decision

OPC wants the same information that KCPL supplies to Staff. Staff agrees that OPC should be entitled to that information. Thus, the Commission will order KCPL to provide it.

But, the Commission agrees that some of OPC's requests may interfere with Staff's autonomy to meet and work with KCPL. As such, OPC's requests to be included in Staff's meetings with KCPL to discuss FAC matters will be denied.

Finally, Staff notes that it does not object to OPC's request for KCPL to report KCPL's report information as required by FERC Order 668. But, Staff requests the Commission order KCPL to continue to also report in a manner consistent with KCPL's FAC Rider. The Commission will grant that request.

KCPL's reporting requirements shall be as follows:

- As part of the information KCPL submits when it files a tariff modification to change its Fuel and Purchased Power Adjustment rate, include KCPL's calculation of the interest included in the proposed rate in electronic format with formulas intact;

- Maintain at KCPL's corporate headquarters or at some other mutually-agreed-upon place and make available within a mutually-agreed-upon time for review by Staff and OPC, separately or together, a copy of each and every coal and coal transportation, natural gas, fuel oil and nuclear fuel contract KCPL has that is in or was in effect for the previous four years;

- Within 30 days of the effective date of each and every coal and coal transportation, natural gas, fuel oil and nuclear fuel contract KCPL enters into, provide both notice to the Staff and OPC of the contract and opportunity for each, separately or together to review the contract at KCPL's corporate headquarters or at some other mutually-agreed-upon place;

- Provide a copy of each and every KCPL hedging policy that is in effect at the time the tariff changes ordered by the Commission in this rate case go into effect for Staff and OPC to retain;

- Within 30 days of any change in a KCPL hedging policy, provide a copy of the changed hedging policy for Staff and OPC to retain;

- Provide a copy of KCPL's internal policy for participating in the Southwest Power Pool's Integrated Market to Staff and OPC;

- Maintain at KCPL's corporate headquarters or at some other mutually-agreed-upon place and make available within a mutually-agreed-upon time for review by Staff and OPC, separately or together, a copy of each and every bilateral energy or demand sales/purchase contract;

- If KCPL revises any internal policy for participating in the Southwest Power Pool, within 30 days of that revision, provide a copy of the revised policy with the revisions identified for Staff and OPC to retain;

- The monthly as-burned fuel report supplied by KCPL required by 4 CSR 3.190(1)(B) shall explicitly designate fixed and variable components of the average cost per unit burned including commodity, transportation, emission, tax, fuel blend, and any additional fixed or variable costs associated with the average cost per unit reported (Staff is willing to work with KCPL on the electronic format of this report);

- KCPL's monthly FAC report shall include the FAC costs and revenues by subaccount for that month and the twelve months ending that month; and

- Purchased power costs and off-system sales revenues provided in all FAC filings and report submissions shall be in accordance with FERC order 668 and the Commission's definition of purchased power costs and off-system sales revenue. The Commission shall also require KCPL to continue reporting Purchased Power ("PP"), Transmission Costs ("TC) and Revenue from Off-System Sales ("OSSR") in a manner consistent with the Rider FAC approved by the Commission in this case.

7. What is the appropriate base factor?

Findings of Fact

81. As recommended by Staff's witness Ashley Sarver**,** KCPL's updated information regarding Revenue Requirement for coal and freight (less test year unit trains, depreciation, and property taxes), purchased power energy, percentage of purchased

power, sales for resale (non-firm) off system sales, and net system input shows that the appropriate base factor should be $0.01545.[108]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission finds that the appropriate base factor is $0.01545.

8. Should the Commission direct the parties to determine baseline heat rates for each of the utility's nuclear and non-nuclear generators, steam and combustion turbines and heat recovery steam generators?

Findings of Fact

82. KCPL included credible heat rate test results in its evidence.[109]

83. Staff investigated, and found KCPL had complied with the Commission's rules on heat rate testing.[110]

84. The Commission rule on heat rate testing does not require KCPL to set a baseline. The rule requires KCPL to supply the heat rate test results within its filing, which it has done.[111]

[108] Ex. 253, pp. 1-2.
[109] Ex. 116, p. 14.
[110] Ex. 200, pp. 171-72.
[111] Tr. Vol. 10, p. 590.

Conclusions of Law

Commission rules require a utility with an FAC to submit a schedule and testing plan for heat rate tests.[112] Commission rules further require those utilities to submit the results of those heat rate tests to the Commission.[113]

Decision

The Commission concludes that KCPL has complied with the pertinent Commission rules. OPC asks the Commission to direct the parties to create baseline heat rates for each of KCPL's generating units. OPC provides no definition for or insight into what would constitute a "baseline" heat rate nor does OPC provide any proof that baseline heat rates would be a useful metric. Perhaps a rulemaking case would be an appropriate forum to explore OPC's proposal. But, the Commission will decline to impose those requirements on KCPL in this case.

9. If the Commission authorizes KCPL to have a FAC, should KCPL be allowed to add cost and revenue types to its FAC between rate cases?

Findings of Fact

85. It is not unusual for SPP to change a schedule or charge code by giving it a new name or by simply reclassifying it. Such changes do not relate to new costs.[114]

[112] Commission Rule 4 CSR 240-3.161(2)(P).
[113] Commission Rule 4 CSR 240-3.161(3)(Q).
[114] Ex. 143, p. 43.

86. The current practice which KCPL proposes to continue allows OPC, Staff or any "party other than the Company" to challenge a new schedule or charge type, and to even include its own charge type in the tariff.[115]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission concludes that it should continue the current practice of allowing KCPL to add cost and revenue types to its FAC between rate cases according to its current FAC tariff. This does not authorize KCPL to add new types of costs or revenues between rate cases, but designations for those costs or revenues may be updated as necessary.

D. Depreciation

1. Should the Commission allow terminal net salvage in the calculation of KCPL's depreciation rates?

2. What depreciation rates should the Commission order KCPL to use?

Findings of Fact

87. Depreciation refers to the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of utility plant in the course of service from causes that can be reasonably anticipated or contemplated, against which the company is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements,

[115] Ex. 142, Sch. TMR-3, pp. 6, 16.

inadequacy, obsolescence, changes in the art, changes in demand and the requirements of public authorities.[116]

88. Net salvage is a component in calculating depreciation that represents the value of equipment and materials recovered during retirements, net of the cost of removing them.[117]

89. Gross salvage is the amount recorded for the property retired due to the sale, reimbursement, or reuse of the property.[118]

90. Cost of removal is the cost incurred in connection with the retirement from service, and the disposition of, depreciable plant.[119]

91. Terminal net salvage is the ultimate retirement of plant facilities, including associated gross salvage and cost of removal. In this case, an additional distinction has been made within terminal net salvage between retirement and dismantlement. Retirement, in this context, is associated with the removal of a unit from service. It includes the costs associated with shutting a unit down, rendering it safe, and complying with regulatory requirements for the closure of the unit. Dismantlement refers to the demolition of a unit. The current depreciation rates that the Commission approved for KCPL in Case No. ER-2014-0307 do not include terminal net salvage.[120]

92. Terminal net salvage is distinguished from interim net salvage. Interim net salvage is associated with the removal from service of units of property from a works or

[116] Ex. 145, p. 4.
[117] Ex. 223, p. 1.
[118] *Id*. at 2.
[119] *Id.*
[120] *Id*. at 2-3.

system during the life of the overall unit. The current depreciation rates include interim net salvage.[121]

93. The amount in question in this case is the cost to retire production plants from service, not including any cost to actually dismantle them.[122]

94. KCPL argues that excluding terminal net salvage would result in intergenerational inequities. These inequities would occur because ratepayers getting the benefit of the asset today would not pay terminal net salvage, but ratepayers not getting the benefit of the asset after it is retired would have to pay the terminal net salvage.[123]

95. Terminal net salvage should not be included in depreciation rates because the actual cost KCPL will incur is unknown, cannot be measured, and is speculative.[124]

96. The Commission has previously excluded terminal net salvage from rates for exactly that reason.[125]

97. Nothing has changed in the interim and there is no good reason to admit costs for terminal net salvage to rates now.[126]

98. As with any speculative cost, if the amount accrued for retirement during the plant's operation in fact exceeds the actual cost of that retirement, there will be no feasible way to return that money to the ratepayers that paid too much.[127]

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[121] *Id*. at 3.
[122] *Id.* at 3.
[123] Tr. Vol.8, pp. 328-29.
[124] Ex. 223, pp. 4, 8; Tr. Vol. 8, p. 336, 350, 363-64.
[125] Ex. 233, p. 4.
[126] Tr. Vol. 8, pp. 353-54.
[127] *Id*. at 364-65.

99. Due to the Commission's decision to exclude terminal net salvage, the Commission finds that Staff's depreciation rates, which also exclude terminal net salvage, are the most appropriate.[128]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

Because the cost of terminal net salvage is speculative, the Commission will not allow KCPL to recover those costs in this case. Staff's depreciation rates, which exclude terminal net salvage, are the appropriate rates.

E. Revenues

1. Should KCPL be permitted to make an adjustment to annualize kWh sales in this rate case as a result of KCPL's Missouri Energy Efficiency Investment Act ("MEEIA") Cycle 1 demand-side programs?

2. How should the Large Power class kW demand billing units be adjusted when a customer leaves the Large Power class?

3. How should customers who left the Large Power class and switched into the Large General Service and Medium General Service classes be annualized?

4. What methodology should be utilized to measure customer growth?[129]

Findings of Fact

100. In 2014, KCPL filed for Commission approval of its MEEIA Cycle 1 energy efficiency programs. In addition, KCPL filed for approval of its Demand Side Investment

[128] Ex. 200, pp. 147-48; Ex. 200, App. 3, Sch. KBP-d.
[129] Per KCPL's brief, Issues V.B., C., and D. are no longer contested, and, thus, the Commission will not address those sub-issues.

Mechanism ("DSIM") to recover the various costs of its MEEIA programs, including any lost revenues.[130]

101. On May 27, 2014, the various parties executed a stipulation that provided for implementation of MEEIA Cycle 1 programs and recovery of costs ("MEEIA Cycle 1 Stipulation").[131]

102. As reflected in that settlement, KCPL would recover MEEIA Cycle 1 lost revenues through the Throughput Disincentive – Net Shared Benefits ("TD-NSB") feature of the DSIM.[132]

103. In August 2015, KCPL filed for Commission approval of its MEEIA Cycle 2 energy efficiency programs as well as another DSIM.[133]

104. On November 23, 2015, various parties executed a Non-Unanimous Stipulation addressing MEEIA Cycle 2 ("MEEIA Cycle 2 Stipulation"). On March 2, 2016, the Commission issued its Report and Order approving the MEEIA Cycle 2 Stipulation. Unlike the MEEIA Cycle 1 DSIM that relied upon the throughput disincentive feature of the DSIM for recovery of lost revenues, the MEEIA Cycle 2 Stipulation contemplated that lost revenues would be recovered through a revenue annualization in subsequent KCPL rate cases.[134]

105. The MEEIA Cycle 2 Stipulation provides for a revenue annualization for "all active MEEIA programs."[135]

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[130] Commission File No. EO-2014-0095.
[131] Ex. 225, Sch. JAR-s5.
[132] *Id.* at Schedule JAR-s5 (page 3 of 20) ("KCP&L's Throughput Disincentive Net Shared Benefits ("TD-NSB") Share that is intended to recover lost margin revenues, and any earned Performance Incentive Award. The Company will begin recovery through a DSIM Rider in the August 2014 billing or as soon as practical thereafter.").
[133] Commission File No. EO-2015-0240.
[134] Exhibit 143, Sch. TMR-6, pp. 12-15.
[135] *Id.* at 13.

106. Arguing that several of the MEEIA Cycle 1 programs were active at the start of the test year, KCPL asserts that the MEEIA Cycle 2 revenue annualization must also apply to these Cycle 1 programs.[136]

107. But lost revenues for Cycle 1 programs were already accounted for through operation of the TD-NSB in the MEEIA surcharge. Thus, granting KCPL's request would result in double recovery of assumed lost revenues.[137]

108. The language "all active MEEIA programs" in the Cycle 2 Stipulation does not allow KCPL to annualize kWh sales from its Cycle 1 demand-side programs.[138]

109. The language "all active MEEIA programs" occurs four (4) times in the Cycle 2 Stipulation. And all four (4) occurrences are in paragraph 10: Annualizations of the Cycle 2 Stipulation.[139]

110. Paragraph 10 a.(ii) of the Cycle 2 Stipulation clearly specifies that the various steps to annualize kWh sales for "all active MEEIA programs" is the methodology in KCPL's Tariff Sheets 49K and 49L. Those sheets refer only to "programs", "all programs" or "Cycle 2 programs". Those sheets do not use phrases such as "all active programs," "all active MEEIA programs" or "Cycle 1 programs"[140]

111. In fact, KCPL's Tariff Sheet 49L explicitly defines "Programs" as Cycle 2 programs and does not include Cycle 1 programs.[141]

112. Finally, KCPL Tariff Sheet 1.04C includes only KCPL's MEEIA Cycle 2 demand-side programs.[142]

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[136] *Id.*
[137] Ex. 310, p. 28.
[138] Ex. 225, pp. 1-2.
[139] *Id*. at 2-3.
[140] *Id.*
[141] *Id*.
[142] *Id*.

113. The tariff sheets control over any ambiguity in the Cycle 2 Stipulation because the parties agreed that the tariffs would control over such an ambiguity.[143]

Conclusions of Law

In 2009, the General Assembly enacted SB376, codified as Section 393.1075. This legislation, known as the Missouri Energy Efficiency Investment Act ("MEEIA"), sought to eliminate any disincentives associated with the utility offering energy efficiency programs. MEEIA and Commission rules sought to eliminate this disincentive by allowing the utility to recover three things: (1) the energy efficiency program costs; (2) lost revenues associated with the energy efficiency programs; and (3) earnings opportunities associated with lost investment in future generation assets.[144]

While the Commission allowed for recovery of lost revenues, its rules did not dictate the specific manner in which lost revenues would be recovered. Rather, the Commission clearly indicated that the recovery of lost revenues could come in different ways.[145] The only explicit requirement in the Commission rules was that the lost revenue recovery mechanism must be spelled out at the time that the Commission approved the utility's energy efficiency programs.[146]

Decision

The Commission concludes that KCPL should not be allowed to make an adjustment to annualize kWh sales in this rate case as a result of KCPL's MEEIA Cycle 1 demand-side

[143] Ex. 143, Sch. TMR-6, p. 10.
[144] Commission Rule 4 CSR 240-20.093(2)(F)-(H).
[145] Commission Rule 4 CSR 240-20.093(2)(G)(4).
[146] Commission Rule 4 CSR 240-20.093(2)(G)(2).

programs. KCPL has already recovered its Cycle 1 costs through the TD-NSB under the Cycle 1 Stipulation. The Commission finds persuasive the argument that the language "all active MEEIA programs" in the Cycle 2 Stipulation does not express or create an opportunity for KCPL to annualize kWh sales from its Cycle 1 demand-side programs.

F. Clean Charge Network

1. Is the Clean Charge Network a regulated public utility service?

2. Should capital and O&M expenses associated with the Clean Charge Network be recovered from ratepayers?

3. Should KCPL develop a PEV-TOU rate to be considered in its next general rate case?

4. Should the session charge be removed from the tariff?

Findings of Fact

114. KCPL and KCPL Greater Missouri Operations Company have launched an initiative to install and operate more than 1,000 electric vehicle charging stations throughout the greater Kansas City region. [147]

115. The total budgeted capital cost for the project is $16.6 million. Approximately $6 million would represent the budgeted investment in KCPL's Missouri jurisdiction.[148]

116. If the charging stations go into rate base, utilities would receive a reasonable chance to recover a rate of return on that investment from ratepayers. This is problematic for services that can be considered both nonessential and/or in which a competitive market already exists. Allowing utilities to recover costs for such services from ratepayers effectively creates a regulatory barrier for new entries, unfairly punishes existing competition, and shifts risk from utility shareholders to ratepayers. Instead of promoting

[147] Ex. 142(NP), p. 21.
[148] *Id*. at 27.

growth, an insulated regulated monopoly can undermine competition, which may reduce efficiency.[149]

117. Introducing a regulated entity such as KCPL into a competitive market creates the potential for inefficiencies as the negative consequences of any given risk are merely shifted to captive ratepayers.[150]

118. Electric vehicle owners already do the vast majority of electric vehicle charging at home.[151]

119. The Kansas Commission has denied KCPL's request to regulate EV charging stations. In its order, the Kansas Commission noted that private businesses are already installing EV stations, and that shareholders, rather than KCPL ratepayers, should be responsible for the costs of installing KCPL's Kansas EV stations.[152]

120. If Missouri regulated those stations, Kansas EV station owners would operate in a free-market environment, while Missouri EV station owners would be working from a more traditional ratemaking model that builds in regulatory lag. That traditional ratemaking model increases the likelihood of stranded assets because unregulated companies can more easily adapt to new technologies than regulated companies can. Thus, if Kansas charging stations, operating in a free-market environment, become better, cheaper, faster, etc., at charging vehicles, then EV owners taking a short trip across the state line in the Kansas City area to charge their vehicles in Kansas could make the Missouri EV stations obsolete. Failure to account for this may result in Missouri ratepayers funding EV charging

[149] Ex. 310 (NP), p. 36.
[150] *Id.*
[151] *Id*. at 16; Ex. 310, p. 38.
[152] Ex. 310, p. 35.

stations that no longer operate the way they were designed to, or that are poorly supported by the utility.[153]

121. Stranded EV charging stations are a reality. Some taxpayer-funded EV charging stations in Oregon are rarely used.[154]

122. If the Commission regulates EV charging stations, then, at least in the near-term, only EV drivers and KCPL shareholders would reap the financial rewards. Non-participants, which would be many of KCPL ratepayers, would bear most of the risk and cost.[155]

123. The Commission sees a clear line between: (1) the extension of distribution system**,** ~~(~~including the meter~~)~~**,** to the charger (a regulated service) and (2) the construction and operation of the charger (a deregulated service).[156]

Conclusions of Law

The threshold question for determination is whether the Commission has jurisdiction to regulate utility-owned and operated electric vehicle charging stations operated in a utility's service area. The Commission "is an administrative agency with limited jurisdiction and the lawfulness of its actions depends directly on whether it has statutory power and authority to act."[157]

The Commission's statutory authority to regulate the EV charging stations proposed by KCPL depends on whether those charging stations constitute "electric plant". Electric plant is "all real estate, fixtures and personal property operated, controlled, owned, used or

[153] *Id*. at 37.
[154] *Id*. at 39.
[155] *Id*. at 45.
[156] Ex. 169.
[157] *State ex rel. Gulf Transp. Co. v. Public Service Commission of State*, 658 S.W.2d 448, 452 (Mo. App. 1983).

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."[158]

Decision

The Commission finds that EV charging stations are not "electric plant" as defined in the statute because they are not used for furnishing electricity for light, heat, or power. EV charging stations are facilities that use specialized equipment, such as a specific cord and vehicle connector, to provide the service of charging a battery in an electric vehicle. The battery is the sole source of power to make the vehicle's wheels turn, the heater and air conditioner operate, and the headlights shine light. The charging service is the product being sold, not the electricity used to power the charging system.

By analogy, a laundromat uses electricity to provide clothes drying services, but that does not mean the laundromat's dryers are electric plant, or that the laundromat should be regulated by the Commission. EV charging stations are not "electric plant" and, therefore, the Commission lacks statutory authority to regulate their operation.

To rule otherwise would conceivably assert jurisdiction over other similar battery-charging services. Some examples would be smart phone charging stations or kiosks, RV parks that allow vehicles to connect to the park's electricity supply, or airports that connect planes to a hangar's electricity supply while parked, which the Missouri General Assembly could not have intended.

This conclusion is further buttressed by an understanding of the Commission's organic act, the statutes establishing the Commission and its mission, which illuminate the fundamental difference between a monopoly and a business operating in a competitive

[158] Section 386.020(14), RSMo.

economic environment.[159] Natural monopoly industries have high fixed costs and capital investment costs that serve as barriers to entry of new competition.[160] Even if new competition was able to surmount these barriers, the costs of doing so would be significant.

The Commission was established to prevent this unnecessary duplication of service on the theory that such over-crowding of the field will eventually be a burden on the public.[161] These laws are based on a policy to substitute regulated monopoly for destructive competition in order to protect the public.[162] However, it is designed as a practical system to promote the public good, and the facts of each case must be considered in applying it.[163] There may be situations where competition could serve a useful public purpose if the public is protected and it does not result in economic waste.[164]

KCPL may include in rate base any equipment, such as distribution lines, transformers, and meters, necessary to provide electric service to an owner of an EV charging station, whether or not that owner is affiliated with KCPL. Also, the Commission orders KCPL to accumulate data regarding the appropriate electric rate to charge owners of EV charging stations and provide that data during its next general rate case. Finally, KCPL shall file an amended tariff to revise the existing prohibition on the resale of electricity in order to clarify that EV charging stations are not reselling electricity.

The Commission has determined that it lacks statutory authority over the proposed EV charging stations because they are not used for furnishing electricity for light, heat, or

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[159] *State ex rel. Gulf Transport Co. v. Public Service Commission*, 658 S.W.2d 448, 456 (Mo. App. 1983).
[160] *Id*.
[161] *State ex rel. City of Sikeston v. Public Service Commission of Missouri*, 336 Mo. 985, 997, 82 S.W.2d 105, 109 (1935).
[162] *State ex rel. Elec. Co. of Missouri v. Atkinson*, 275 Mo. 325, 204 S.W. 897, 899 (1918).
[163] *Id.*
[164] *State ex rel. City of Sikeston v. Public Service Commission of Missouri*, 336 Mo. 985, 998, 82 S.W.2d 105, 110 (1935).

power. Thus, it is unnecessary for the Commission to address the remaining disputed Clean Charge Network issues.

G. Customer Experience

Is KCPL's strategy with respect to customer service, customer experience and community involvement in the interest of its customers?

Findings of Fact

124. KCPL surveyed its customers in the past. Some questions KCPL asked its customers were political questions with which OPC takes issue.[165]

125. One survey to which OPC objected occurred in 2011, and the other occurred in 2013, both well outside the agreed-upon test year.[166]

126. At the Commission's direction, KCPL responded that in the test year, it spent $62,310 on surveys, and that 2.09 percent of the questions in the surveys were political. Thus, KCPL suggests that if the Commission were inclined to make an adjustment, the proper adjustment would be to remove 2.09 percent of the $62,310 cost from rates. That amount would be $1,305.[167]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission will not order KCPL to stop asking political questions, as such an order may run afoul of KCPL's First Amendment right to free speech. However, the

[165] Ex. 330, 331.
[166] *Id*.
[167] KCPL Response to Order Directing Filing (filed April 17, 2017).

Commission can determine it is not appropriate for ratepayers to fund a utility's political surveys and set rates in a fashion such that its ratepayers do not pay for such questions. As such, the Commission will order a $1,305 reduction in revenue requirement for the political questions KCPL asked its customers during the test year.

H. Rate Design/Class Cost of Service

1. What interclass shifts in revenue responsibility, if any, should the Commission order in this case?

2. How should any increase ordered in this case be applied to each class?

6. How should any increase to Rates LGS and LPS be distributed?

Findings of Fact

127. A Class Cost of Service ("CCOS") study attempts to allocate or assign a utility's total cost of providing service to all customer classes such that it reasonably reflects cost causation.[168]

128. CCOS studies should serve as a guide to setting revenue requirements and are not precise. CCOS studies are based on a direct-filed revenue requirement, and the allocation of that revenue requirement among specific accounts, using a specific rate of return. Unless the Commission approves that exact set of accounting schedules, as well as the direct-filed billing determinants in setting the revenue requirement in a particular case, there is an inherent disconnect between the CCOS study results used in providing a party's class cost of service and rate design recommendations, and the actual class cost of service that would result at the conclusion of a case.[169]

[168] Ex. 202, p. 6.
[169] *Id* at 27.

129. The results of a CCOS study are only one of the elements that should be considered when determining rates.[170]

130. Other factors the Commission should take into consideration include: the customers' ability to understand their rates, rate continuity, rate stability, revenue stability, a minimization of rate shock and the ability to meet incremental costs, such as the market cost of energy.[171]

131. Review of all the parties' CCOS results reveals some consistent themes.[172] The Residential rates provide results at or below their relative rate of return. The Small, Medium, and Large General Service rates are consistently shown to provide a higher relative rate of return than the average. The Large Power relative rates of return are less consistent across the studies. Further, the relationship between the residential relative rate of return and the Large Power relative rate of return varies based on the method used to allocate production plant. Production allocation methods that rely more heavily on peak demands allocate more cost to the residential class while methods that rely more heavily on energy allocate more cost to the Large Power class. The Lighting class shows extreme variation in results which has been common in previous cases and is likely due to the unique characteristics of lighting.[173]

132. In reviewing the magnitude of change needed to move the residential and Large Power rates of return and the potential impact of those shifts combined with the

[170] Tr. Vol. 11, p. 889.
[171] Ex. 202, p. 27.
[172] CCOS studies were filed by KCPL, Staff, MIEC, and USDOE.
[173] Ex. 137, p. 6.

proposed revenue increase, KCPL recommends no shift in revenues to classes based on the outcome of its class cost of service study at this time.[174]

133. Of all the studies filed in this matter, only Staff's Base, Intermediate, Peak ("BIP") study recognizes disparity in capacity and fuel costs.[175]

134. The BIP method uniquely recognizes the tradeoffs that exist between the cost of installing a plant, the generation capabilities of a plant, and the cost of obtaining energy from that plant.[176]

135. Staff's detailed BIP method takes into consideration the differences in the capacity costs associated with units that run at a stable level much of the year, versus the capacity costs associated with units that quickly dispatch only a few hours a year, as well as those units that have a cost and operation characteristic in between those extremes. Staff's detailed BIP method also considers the inverse relationship between the cost of capacity and the cost of energy produced by base, intermediate, and peaking units. Other common CCOS methods tend to assume that energy costs are the same amount regardless of the hour of consumption or the source of the energy, and/or do not consider the operating characteristics of plants and assume that capacity costs are equal among types of plants.[177]

136. Because KCPL participates in the Southwest Power Pool's Day-Ahead, Real-Time, and Ancillary Services integrated markets ("SPP IM"), its generation is dispatched as part of the larger SPP fleet. SPP's dispatch is ordered according to security-constrained economic merit, which results in price signals stacking in a manner consistent with those

[174] *Id*. at 10.
[175] Ex. 212, p. 2.
[176] Ex. 213, pp. 4-5.
[177] Ex. 201, p. 9.

experienced by a utility with a generation fleet that includes the relative amounts of each base, intermediate, and peak generation units assumed in the *NARUC Manual.* Unlike other common CCOS methods, Staffs BIP method most reasonably assumes that some plants will run virtually year round (base), only part of the year (intermediate), and rarely during the year (peak).[178]

137. Among the submitted studies, Staff's BIP study also best accounts for KCPL's participation in the SPP integrated energy market through its recognition of the variability of fuel costs.[179]

138. As discussed and demonstrated in Staff's CCOS, base, intermediate, and peak units have very different installed capacity costs. Of the studies filed in this case by all parties, only Staff's detailed BIP study recognizes this disparity in capacity cost.[180]

139. For purposes of evaluating the reasonableness of other parties' study results, Staff has performed an Average and Excess ("A&E") study using the A&E allocator for production capacity accounts and the sales at generation allocator for the production energy accounts. The results of the A&E study indicate no interclass shifts are necessary within the reasonable accuracy of the study, as opposed to the minimal interclass shifts indicated by the BIP study.[181]

140. Staff's CCOS study is based on Staff's cost of service study, while the other CCOS studies are based on KCPL's cost of service study. KCPL's revenue requirement calculation includes a higher level of expense and a lower level of revenue than Staff's revenue requirement calculation. Because KCPL-based studies assume a higher level of

[178] Ex. 202, p. 13.
[179] *Id*.
[180] Ex. 212, p. 2.
[181] *Id.* at 3.

expense, each class has less net income as calculated for that class' rate of return on its studies.[182]

141. The overall revenue requirement studied and the composition of that revenue requirement (between net expenses versus rate of return) is as big or bigger a driver of differences in CCOS results than is the selection of the production capacity and energy allocators.[183]

142. The complex generation fleets and interconnected transmission systems that exist are a reflection of the diversity of load, generation, and geography that are the simple reality of the complex and interconnected utility industry.[184]

3. Should KCPL be permitted to increase the fixed customer charge on residential customers?

Findings of Fact

143. Except for KCPL's inclusion of the MEEIA Cycle 1 and RESRAM charges, KCPL would be proposing the same $12.62 charge that Staff proposes.[185]

144. At the time of filing of the CCOS Report, Staff calculated a residential customer charge of $18.44. Upon further review, Staff found that certain amortizations for solar rebates and pre-MEEIA costs were inadvertently included in its calculation of the customer charge. Once these costs are removed from the calculation, Staff calculates a fully-allocated residential customer charge of $12.62.[186]

[182] *Id.* at 5.
[183] *Id*. at 6-7.
[184] Ex. 213, p. 5.
[185] Tr. Vol. 11, p. 942.
[186] Ex. 210, p. 2.; Ex. 211, pp. 1-2.

145. Allocating each customer class an equal percentage of the rate increase would support a customer charge of $13.18.[187]

146. The Commission could reasonably accept the results of KCPL's and/or Staff's cost of service study for the customer charge and establish the customer charge in the range of $12.62 to $13.18 per month.[188]

4. Should KCPL be required to implement the block rate structure proposed by the Division of Energy for residential customers?

Findings of Fact

147. Typically, residential customers in Missouri pay "declining block" energy charges in the winter, i.e., they pay less per amount of energy used after a certain threshold or thresholds of usage. In the summer, these customers pay a "flat" rate, i.e., the same charge per amount of energy used for all amounts of usage.[189]

148. A declining block rate sends poorer efficiency signals to customers, since the effective price signal is that higher amounts of usage cost less.[190]

149. Flat rates provide slightly better price signals, but the best efficiency-inducing price signals, sponsored by DE, are provided by inclining block rates ("IBR") (which charge more per amount of energy used after a certain threshold or thresholds of usage).[191]

150. Inclining block rates signal to customers that higher use incurs higher costs, encouraging greater energy efficiency.[192]

[187] Tr. Vol. 11, p. 890.
[188] Tr. Vol. 11, pp. 830, 890, 1050, 1068.
[189] Ex. 800, p. 15.
[190] *Id.*
[191] *Id.*
[192] *Id.*

151. Inclining block rates can not only be used to recover short-run "fixed" costs, but signal to customers that higher usage spurs greater investment in future plant; this signal will reduce future rate increases and provide benefits to all customers.[193]

152. The increased volatility in annual revenues resulting from DE's proposal will be only about 0.1 percent of KCPL's Missouri revenue.[194] A change of 0.1 percent in the affected residential class' pre-increase revenues would only amount to a change of approximately $0.10 per customer per month.[195]

153. Given the general need to consider gradualism, the avoidance of rate shock, and other concerns, DE moderated its non-summer rate design proposal by only flattening non-summer rates such that the highest single-month, revenue-neutral bill impact would be five percent (and not moving immediately to inclining block rates during the non-summer months).[196]

154. KCPL made no efforts to study revenue volatility as a result of the proposed rate design.[197]

155. Considering that the standard error in electricity sales in Missouri is about three percent, the increased volatility that may result from DE's inclining block rate proposal is small.[198]

156. This impact on volatility is the predictable result of the gradual shift in rate design proposed by DE, which is structured to limit bill impacts to no more than 5 percent for 95 percent of customers.[199]

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[193] *Id*. at 16.
[194] Ex. 401, p. 7.
[195] Tr. Vol. 12, p. 1255.
[196] Ex. 800, pp. 19-20, 22; Ex. 802, p. 7.
[197] Tr. Vol. 11, p. 917.
[198] Tr. Vol. 12, pp 1117, 1186.
[199] Ex. 800, p. 21.

157. The first 500-600 kilowatt hours (kWh) is considered the minimum amount needed for the residents of a typical home to survive. This is also known as the "lifeline block".[200]

158. Low-income customers tend to be lower usage customers.[201]

159. Under DE's IBR proposal, the rates for the lifeline block will decrease, even with no change in customer behavior.[202]

160. An inclining block structure would also effectuate the public policy of the state as enacted in the Missouri Energy Efficiency Investment Act. The IBR would do so by incenting energy efficiency and demand response due to the second block of energy being more expensive than the first block during the summer.[203]

161. Such energy savings and peak demand reduction reduces costs to the utility, and, ultimately, also to its customers.[204]

5. Should KCPL be required to propose time-varying rate offerings for residential customers in future cases?

Findings of Fact

162. Similar to inclining block rates, time-varying rates can also reduce peak demand.[205]

163. Time-varying rates can be more beneficial to reduce peak demand than inclining block rates.[206]

[200] Tr. Vol. 12, pp. 1164-65.
[201] Ex. 800, p. 16.
[202] Tr. Vol. 12, pp. 1164-65; Ex. 800, p. 20.
[203] Ex. 800, p. 20; Tr. Vol 12, p. 1252.
[204] Ex. 800, p. 30.
[205] Tr. Vol. 11, p. 1044.
[206] Ex. 138, p. 9.

164. Time of use rates (also known as demand response rates), better reflect cost causation than the current rate design and would create beneficial incentives for customers to reduce usage during system peak times.[207]

165. KCPL has smart meters installed for over 90 percent of its customers, yet does not have tariffs in place that would allow customers to benefit from demand response rates those meters would allow.[208]

166. Many other utilities already offer time-differentiated rates to residential customers.[209]

Conclusions of Law

KCPL has the burden of proof to show that its proposed tariffs are just and reasonable, *including* the reasonableness of its rate design.[210] Just because a company derives a higher rate of return from one class than another does not necessarily render those rates unjust or unreasonable.[211] Class cost of service is often considered but a starting point in quantifying what part of the revenue responsibility is afforded to each customer class.[212] Indeed, class costs of service studies are often considered more art than science.[213] Other factors should be considered when establishing

[207] Ex. 400, p. 19; Ex. 138, p. 9.
[208] Ex. 207, p. 4.
[209] Tr. Vol. 11, p. 924.
[210] *See, e.g., State ex rel. Monsanto Company v. Public Service Commission,* 716 S.W.2d 791 (Mo. 1986) "Laclede filed the tariffs here in question using the existing rate design. In the suspension order and notice of proceedings dated January 18, 1983, the Commission noted that the Company bore the burden of proof before the Commission and ordered the Company 'to provide evidence and argument sufficient for the Commission to determine . . . the reasonableness of the Company's rate design.'" *Id.* at 795. See also *In re Empire District Electric Company*, Commission Case No. ER-2004-0570, Report and Order (March 10, 2005).
[211] *Midwest Gas Users Ass'n v. Kansas SCC,* 595 P.2d 735, 747 (Kan. App. 1979).
[212] *Shepherd v. City of Wentzville*, 645 S.W.2d 130, 133 (Mo. App. 1982).
[213] *Associated Natural Gas Co*., 706 S.W.2d at 880 (citing *United States v. Federal Communications Commission,* 707 F.2d 610, 618 (D.C.Cir. 1983).

rates.[214] It is up to the Commission to evaluate the testimony of expert witnesses and accept or reject any or all of any witness' testimony.[215]

Decision

The Commission concludes that all customer classes should receive an equal percentage of KCPL's rate increase. The Commission finds that Staff's BIP method is the proper CCOS method to allocate costs among customer classes for this case. KCPL's fixed customer charge for residential customers should be $12.62. KCPL shall implement the inclining block rate structure for residential customers proposed by DE, which would move KCPL towards charging flat volumetric rates for residential general use customers during the winter, and inclining block rates for residential general use customers during the summer. Further, KCPL shall propose time-varying rate offerings for residential customers in its next rate case.

I. True-up issues

1. What party's capital structure, including long-term debt, should be used?[216]

2. Should Staff's or KCPL's market prices be used?

3. Should transmission expenses be annualized based on fourth quarter results of 2016 or annualized using the 12-month period ending December 2016? Both methods include an annualized level of known and measurable changes for both Independence Power and Light and Southwest Power Pool Z2 charges and credits.

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[214] *State ex rel. Associated Natural Gas Co. v. Public Service Commission of Missouri*, 706 S.W.2d 870, 879 (Mo. App. 1985) (citing *Southwestern Bell Telephone Company v. Arkansas Public Service Commission,* 593 S.W.2d 434, 445 (Ark. 1980); *Shepherd v. Wentzville,* 645 S.W2d 130 (Mo. App. 1982*); State ex rel. City of Cape Girardeau v. Public Service Commission*, 567 S.W.2d 450 (Mo. App. 1978); *Midwest Gas Users' Ass'n v. State Corp. Com'n, 595 P.2d 735* (Kan. App. 1979); *Central Maine Power Company v. Public Utilities Commission, 382 A.2d 302* (Me. 1978); *St. Paul Area Chamber of Commerce v. Minn. Public Service Commission*, 251 N.W.2d 350 (Minn. 1977); and *American Hoechest Corporation v. Department of Public Utilities*, 399N.E.2d 1(Ma.1980).

[215] *Id.*(*citing In Re Permian Basin Area Rate Cases*, 390 U.S. 747,800, 88 S.Ct.1344,1377, 20 L.Ed.2d 312, (1968)).

[216] The Commission has already resolved this issue under "Cost of Capital"; thus, it will not be discussed here.

4. Should RES costs be amortized over a period of 2.6 years or 3 years?

Findings of Fact

167. Power market prices for 2014 were much higher than 2015 and 2016 due to the advent of the Southwest Power Pool Integrated Market ("SPP IM") market, higher than normal load, gas curtailments, forced outages and planned maintenance.[217]

168. All of these circumstances combined to push 2014 prices 20 percent higher than normal.[218]

169. Staff considered these circumstances and proposed an adjusted power market price of $21.08 per MWhr. This price was not updated through the end of the true-up period.[219]

170. KCPL also considered the abnormal circumstances of 2014 and proposed an adjusted power market price, updated through the end of the true-up period, of $20.58 per MWhr.[220]

171. The average day ahead market price for the KCPL Hub was $20.31 for the 2016 test year.[221] .

172. Staff uses the PLEXOS production cost model to perform an hour-by-hour chronological simulation of a utility's generation, power purchases, and power sales. Staff uses this model to determine the annual variable cost of fuel, net purchased power cost, and fuel consumption.[222]

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[217] Ex. 171, p. 3.
[218] *Id.*
[219] *Id.* at. 2.
[220] *Id.*
[221] *Id.* at 4.
[222] Ex. 200, p. 80.

173. The PLEXOS model operates in a chronological fashion, meeting each hour's energy demand before moving to the next hour. It will schedule generating units to dispatch in a least-cost manner based upon fuel cost and purchased power cost while taking into account generation unit operational constraints. This model simulates the way a utility should dispatch its generating units and purchase power in order to meet the net system load in a least cost manner.[223]

174. Staff proposed an annualized transmission expense amount using historical data updated through the end of the true-up period.[224]

175. KCPL used the fourth quarter results of 2015 to arrive at its proposed annualized transmission expense, arguing that the fourth quarter results are closer to the expense it expects to incur in the near future.[225]

176. KCPL calculated a transmission amount of $63,061,796 to be set in rates to collect for 2016 and beyond.[226]

177. However, the actual amount of transmission expense incurred in 2016 was only $59,076,548.[227]

178. Furthermore, not only would using the forecasted amount lead to overinflated transmission expense level being placed into rates, it signals an incorrect trend in transmission expense. The evidence shows that the upward trend in transmission expense is leveling off.[228]

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[223] *Id*. at 81.
[224] Ex. 248, p. 2.
[225] Tr. Vol. 14, p. 1802.
[226] I*d.* at 1803.
[227] *Id.* at 1803; Ex. 247 Sch. KL-tr1, p. 3.
[228] Ex. 247, p. 4.

179. Past years have seen 30 percent increases in transmission expense, but the increase from 2015 to 2016 was only a 1.2 percent increase in the level of transmission expense.[229]

180. KCPL is requesting in this case that the Renewable Energy Standard ("RES") amortization amount be set at an amount equal to $8,470,587 as of the true-up date in this case to reflect one percent (1%) of the overall normalized revenue to be recovered.[230]

181. KCPL had previously included the RES cost amortization authorized respectively in File No. ER-2012-0174 (Vintage I) and File No. ER-2014-0370 (Vintage 2). The remaining balance of Vintage 2 plus all of the RES compliance costs incurred since the previous rate case (Vintage 3) are in a deferred account. Vintage I amortization ended January 2016. Per the *Partial Non-Unanimous Stipulation and Agreement to Certain Issues* in File No. ER-2014-0370, KCPL has applied prospective tracking of the Vintage I amortization to the current RES costs deferred in Vintage 3.[231]

182. KCPL entered into a *Stipulation and Agreement in* File No. ET-2014-0071. In this *Stipulation and Agreement,* KCPL agreed that any cost recovery in future general rate proceedings or RESRAM proceedings will be consistent with 4 CSR 240-20.100(6), and that any recovery of RES compliance costs related to solar rebate payments will not exceed one percent (1%) of the Commission-determined annual revenue requirement in the proceeding. As a result, KCPL believes its request has fallen within the parameters established.[232]

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[229] *Id.*
[230] Ex. 174, p. 10.
[231] *Id.*
[232] *Id*. at 11.

183. KCPL included an amortization period of 2.6 years for Vintage 3 costs in order to provide for recovery of an amount that was close to the one percent threshold that is allowed by the Code of State Regulation and the previous *Stipulation and Agreement* in File No. ET-2014-0071. Staff chose an amortization period of three years for Vintage 3 which reduces and slows the recovery of the RES costs that have previously been expended by KCPL.[233]

184. Regulatory assets and their associated amortizations are tracked for any over-recovery based on the *Stipulation and Agreement* that has already been entered into in this rate case proceeding. As such, if any over recovery exists regarding the RES regulatory asset at the time of KCPL's next rate case proceeding, these amounts will be tracked and given back to customers. Including an amortization period of 2.6 years instead of 3 years allows for a quicker recovery period of costs that have already been expended by KCPL. The fact that regulatory asset amortizations are tracked as part of this rate case provide customers with the assurance that KCPL will only recover the associated RES costs it has already expended.[234]

Conclusions of Law

No additional Conclusions of Law are required for this issue.

Decision

The Commission concludes that KCPL's power market price of $20.58 per MWhr and Staff's PLEXOS model should be used in the determination of non-firm off-system

[233] *Id.*
[234] *Id*. at 11-12.

sales revenues and non-firm purchased power expense. Transmission expenses should be annualized based on the 12-month period ending December 2016 in accordance with Staff's recommendation. KCPL is allowed to amortize its RES costs over 2.6 years.

Decision Summary

In making this decision, as described above, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the material was not dispositive of this decision.

Additionally, KCPL provides safe and adequate service, and the Commission concludes, based upon its independent review of the whole record, that the rates approved as a result of this order are just and reasonable and support the continued provision of safe and adequate service. The revenue increase approved by the Commission is no more than what is sufficient to keep KCPL's utility plants in proper repair for effective public service and provide to KCPL's investors an opportunity to earn a reasonable return upon funds invested.

By statute, orders of the Commission become effective in thirty days, unless the Commission establishes a different effective date.[235] In order that this case can proceed expeditiously, the Commission will make this order effective on May 13, 2017.

[235] Section 386.490.3, RSMo.

THE COMMISSION ORDERS THAT:

1. The tariff sheets submitted on July 1, 2015, by Kansas City Power & Company, assigned Tariff Nos. YE-2017-0004 and YE-2017-0005, are rejected.

2. Kansas City Power & Light Company is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order. Kansas City Power & Light Company shall file its compliance tariff sheets no later than May 9, 2017.

3. Kansas City Power & Light Company shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than May 9, 2017.

4. The Staff of the Missouri Public Service Commission shall file its recommendation concerning approval of Kansas City Power & Light Company's compliance tariff sheets no later than May 15, 2017.

5. Any other party wishing to respond or comment regarding Kansas City Power & Light Company's compliance tariff sheets shall file the response or comment no later than May 15, 2017.

6. The March 16, 2017 Kansas City Power & Light Company's Request to Take Official Notice is granted.

7. The March 17, 2017 Midwest Energy Consumers' Group's Request to Take Official Notice is granted.

8. All other requests for relief not granted are denied.

9. This Report and Order shall become effective on May 13, 2017, except that ordered Paragraphs 2, 3, 4, and 5 shall become effective upon issuance.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 3rd day of May, 2017.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Summit Natural Gas Of Missouri Inc., for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control And Manage a Natural Gas Distribution System to Provide Gas Service in Various Counties as an Expansion of its Existing Certificated Areas.	)	**File No. GA-2017-0016**

ORDER REJECTING AMENDED PARTIAL STIPULATION AND AGREEMENT

Certificates

§ 63. Penalties

Summary of Holding: The Commission did not decide whether a payment made under an agreement is a statutory penalty per se as described in Section 386.570, RSMo. It held, however, that when such a payment is made per agreement in recognition that one may not do something with impunity, then the public policy expressed in Section 385.600, RSMo, and Article IX, Section 7 of the Missouri Constitution to ensure a source of funding for public schools is implicated, and such payment should be made to the public schools.

§ 63. Penalties

Both Section 386.600, RSMo and Article IX, Section 7, of the Missouri Constitution designate the public school fund as the recipient of penalties and forfeitures collected on behalf of the state. This is a clear expression by lawmakers of this state's public policy to ensure a source of funding for the public schools. Citing *In re Rahn's Estate*, 291 S.W. 120, 123 (Mo. 1927) (Describing an act as being against public policy if it contravenes a well-defined expression of the settled will of the people, which expression must be looked for in the Constitution, statutes, or judicial decisions of the state.)

Evidence, Practice and Procedure

§30. Settlement procedures

By law, parties are authorized to enter into settlement agreements to resolve a contested case or what has the potential to become a contested case. Citing *Bodenhausen v. Missouri Bd. of Registration for Healing Arts*, 900 S.W.2d 621 (Mo. 1995).

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of May, 2017.

In the Matter of the Application of Summit Natural Gas Of Missouri Inc., for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control And Manage a Natural Gas Distribution System to Provide Gas Service in Various Counties as an Expansion of its Existing Certificated Areas.	)	**File No. GA-2017-0016**

ORDER REJECTING AMENDED PARTIAL STIPULATION AND AGREEMENT

Issue Date: May 3, 2017 Effective Date: June 2, 2017

Summit Natural Gas of Missouri, Inc. ("Summit" or the "Company") and the Staff of the Missouri Public Service Commission submitted for the Commission's approval an *Amended Partial Stipulation and Agreement* (hereinafter, the "Amended Agreement"). The signatories to the Amended Agreement acknowledge that although not a party to the Amended Agreement, the Office of the Public Counsel does not oppose the Amended Agreement. The Amended Agreement resolves issues identified by Staff during its investigation of Summit's application for a Certificate of Convenience and Necessity.[1]

In the Amended Agreement, Summit admits that without the Commission's approval, the Company constructed and installed a gas plant used to service customers

[1] On April 13, 2017, the Commission issued an order granting a CCN to Summit.

outside of its certificated service area. Summit also admits that, in violation of statutes,[2] it served and billed one hundred and sixty customers for natural gas utility service outside of the Company's certificated service area. While a complaint was never filed against Summit, the signatories appeared to have entered into the agreement in hopes of efficiently resolving the matter without initiating a separate contested case. By law, parties are authorized to enter into settlement agreements to resolve a contested case or what has the potential to become a contested case.[3]

Paragraph 5 of the Amended Agreement states in pertinent part that in lieu of a penalty, Summit agrees to forfeit the sum of seventy-five thousand dollars to community action program agencies. In return, under Paragraph 9 of the Amended Agreement, Staff agrees not to seek or support the imposition of penalties against Summit for the provision or billing of service beyond its certificated area. Staff also agrees not to seek penalties against Summit for failure to obtain the Commission's permission before construction and installation of gas plant outside of its certificated area.

Article IX, section 7 of the Missouri Constitution (hereafter, "Section 7") states that "[a]ll penalties, forfeitures, and fines collected hereafter for any breach of the penal laws of the state, shall be distributed annually to the schools of the several counties…." The courts have stated that the unequivocal purpose of Section 7 is to make the proceeds of penalties, forfeitures, and fines collected for a violation of a penal law available only for school purposes. *Reorganized School District No. 7 Lafayette County v. Douthit*, 799 S.W.2d 591 (Mo. Banc 1997).

[2] Section 393.170.1, RSMo, states that no gas corporation shall construct a gas plant without having first obtained the approval of the Commission. Sections 393.130 and 393.140, RSMo, requires a public utility, such as Summit, to service and bill customers in accordance with tariffs approved by the Commission.
[3] *Bodenhausen v. Missouri Bd. of Registration for Healing Arts*, 900 S.W.2d 621 (Mo. 1995).

In *Missouri Gaming Com'n v. Missouri Veterans' Com'n*,[4] the Missouri Supreme Court addressed a challenge to administrative penalties imposed by the Missouri Gaming Commission. By statute, the penalties were required to be paid to the Veterans Commission. The court analyzed a prior court holding and stated that when fines and penalties are prescribed as a punishment for a violation of public rights, and such penalties or fines are to be recovered by a public authority, the recovered fines come within the scope of Section 7 and may not be used in a manner not prescribed by the constitution. The court in *Missouri Gaming Com'n* held that the pertinent statute was a penal law since it authorized penalties, the assessment of, and the collection of penalties against a casino by the Gaming Commission for the violation of a public right that was recoverable by a public authority. Similar to violations of the laws of the Gaming Commission, by statute, violations of the Public Service Commission Law[5] are subject to penalty.

Summit acknowledges that it is a gas corporation subject to the jurisdiction of the Commission. Section 386.570.1, RSMo,[6] states that any corporation, person or public utility that fails to comply with any law or fails to obey any order of the Commission is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense. Once recovered, those funds are designated for use by the public school fund. Section 386.600, RSMo, states:

> "An action to recover a penalty or forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit in this state in the name of the state of Missouri and prosecuted to final judgment by the general counsel to the

[4] 951 S.W.2d 611 (Mo. En banc. 1997).
[5] Section 386.010, RSMo states that Chapter 386 shall be known as the "Public Service Commission Law" and shall apply to the public services herein described and the commission herein created, and to the public service corporations, persons and public utilities mentioned and referenced to in this chapter.
[6] All statutory references are to the 2016 Missouri Revised Statutes.

> commission…. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state."

OPC contends that the proposed payment under the Amended Agreement is not a statutory penalty, as described in Section 386.570, but "a payment in recognition by Summit utilities that it may not operate with impunity."[7] This recognition by Summit will hopefully occur regardless of the recipient of its "forfeiture." However, should OPC's interpretation be correct, the Commission must still evaluate how to best serve the public interest.[8] Both Section 386.600 and Section 7 designate the public school fund as the recipient of penalties and forfeitures collected on behalf of the state. This is a clear expression by lawmakers of this state's public policy to ensure a source of funding for the public schools.[9] By distributing funds to community action agencies, the Amended Agreement ignores that public policy.

As worthy of financial assistance as the community action agencies may be, the Amended Agreement disregards the purpose of Section 7. Finding the forfeiture in Paragraph 5 of the Amended Agreement to be inconsistent with the intentions of the requirements of Section 7, the Commission will reject the Amended Agreement.

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[7] See *State v. Hendrix*, 944 S.W.2d 311 (Mo.App. W.D. 1997) (Where county prosecutor agreed to not bring charges against defendant in exchange for money paid to law enforcement fund, court stated that counties are prohibited from circumventing through plea bargain process legislative scheme that allocates forfeited funds to schools.)

[8] See *State ex rel. Public Water Supply Dist. v. Public Service Comm'n*, 600 S.W.2d 147 (Mo.App. 1980). The public interest is a matter of policy to be determined by the Commission.

[9] See *In re Rahn's Estate*, 291 S.W. 120, 123 (Mo. 1927) (Describing an act as being against public policy if it contravenes a well-defined expression of the settled will of the people which expression must be looked for in the Constitution, statutes, or judicial decisions of the state.)

THE COMMISSION ORDERS THAT:

1. The *Amended Partial Stipulation and Agreement* is rejected.

2. This order shall become effective on June 2, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Burton, Senior Regulatory Law Judge.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition for an Interim	)	
Receiver and for an Order Directing the	)	
General Counsel to Petition the Circuit	)	
Court for the Appointment of a Receiver	)	**File No. WO-2017-0236**
For Ridge Creek Water Company, LLC,	)	
And for Ridge Creek Development, L.L.C.	)	

REPORT AND ORDER

Evidence, Practice and Procedure

§23. Notice and hearing

Appointment of interim receiver was made effective immediately to protect the public from the threat of unsafe and inadequate water service and the danger that the water system would be abandoned by its owners.

Water

§10. Receivership

The Commission appointed an interim receiver and authorized the Commission's General Counsel to petition the circuit court for appointment of a receiver for a water company that was unable or unwilling to provide safe and adequate service to its customers.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Petition for an Interim	)	
Receiver and for an Order Directing the	)	
General Counsel to Petition the Circuit	)	
Court for the Appointment of a Receiver	)	**File No. WO-2017-0236**
For Ridge Creek Water Company, LLC,	)	
And for Ridge Creek Development, L.L.C.	)	

REPORT AND ORDER

Issue Date: May 3, 2017

Effective Date: May 13, 2017

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition for an Interim Receiver and for an Order Directing the General Counsel to Petition the Circuit Court for the Appointment of a Receiver For Ridge Creek Water Company, LLC, And for Ridge Creek Development, L.L.C.	))))))	**File No. WO-2017-0236**

APPEARANCES

Jacob Westen, Deputy Staff Counsel, 200 Madison Street, Ste. 800, Jefferson City, Missouri 65102-0360.

For the Staff of the Missouri Public Service Commission.

Ryan Smith, Counsel, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

For the Office of the Public Counsel and the Public.

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

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered

by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On March 14, 2017, the Commission's Staff filed a Petition asking the Commission to direct its General Counsel to petition the Circuit Court of Cole County to appoint a receiver to take control of Ridge Creek Water Company, LLC and Ridge Creek Development Company, LLC. That petition also asked the Commission to appoint an interim receiver to take control of those companies pending the Circuit Court's appointment of a receiver. The Commission conducted an evidentiary hearing on May 2. The members and owners of Ridge Creek Water and Ridge Creek Development did not appear at the hearing, but on April 14, filed their signed consent to the appointment of an interim receiver and a receiver for both companies.

Findings of Fact

1. Ridge Creek Water Company, LLC is a member-managed Missouri certificated water corporation as defined by Section 386.020(59), RSMo 2016. It holds a certificate of service authority to provide water service to an unincorporated area of Pulaski County, Missouri, which the Commission issued to Ridge Creek Water on September 2, 2015, in File No. WA-2015-0182.

2. Ridge Creek Development, LLC is a Missouri limited liability company. It is not certificated by the Commission to provide water service to the public. However, Ridge Creek Development is, in fact, providing water service to an unincorporated area of Pulaski County, Missouri, and therefore meets Section 386.020(59)'s definition of a water corporation.

3. Both Ridge Creek Water and Ridge Creek Development are owned by a married couple, Michael Stoner and Denise Stoner.

4. The water system operated by Ridge Creek Water and Ridge Creek Development serves 390 people through 130 service connections.

5. Previously, in File No. WC-2015-0011, Staff brought a complaint before the Commission against Ridge Creek Development for operating a public water system without a certificate from the Commission. That complaint was dismissed when Ridge Creek Water was formed and granted a certificate in 2015.

6. Ridge Creek Water issues bills to its customers, but does not own the water distribution system that is used to serve those customers. Further, Ridge Creek Water does not own, or otherwise control, the water wells that supply water to the water system. Those water wells are owned by Ridge Creek Development.

7. Customer payments for water service are deposited into a bank account owned by Ridge Creek Development and those water customer-generated funds are comingled with the funds of Ridge Creek Development and other corporate entities owned by Michael and Denise Stoner.

8. Although most, or all, of the funds going into the Ridge Creek Development owned bank account come from the customers of Ridge Creek Water for water service, payments go out of that account to the benefit of other corporate entities. Ridge Creek Water does not maintain its own financial records.

9. The limited maintenance and repairs done on the water system are frequently performed by an employee of Ridge Creek Development.

10. Ridge Creek Water and Ridge Creek Development do not provide safe and adequate service to their water customers. The water system relies on 22 separate water wells scattered around the residential subdivisions served. Although the water system is

less than ten years old, no one knows which houses are served from which water well because there is no map of the water distribution system. This is a problem because one of the 22 wells, well number 7, has been found by the Missouri Department of Natural Resources (DNR) to be contaminated by E. coli and residents served by that well are to boil their water before consumption. Since the water company does not know which houses are served by well number 7, it cannot be sure who should be boiling their water. In addition, the other 21 wells serving the system are built in the same manner and draw water from the same source. If well number 7 is contaminated, the others may be as well, and perhaps the entire system should be subject to a boil order. But since Ridge Creek Water and Ridge Creek Development have not performed required tests on their system since April 1, 2016, there is no way to know if the other wells are also contaminated.

11. Further, the lack of knowledge of the details of the water distribution system makes it difficult to maintain the system. In January 2017, a customer was left without water for 14 days while Ridge Creek Water and Ridge Creek Development failed to identify the source of the problem. Ultimately, it was determined that the customer was the only customer served by a well far from his home rather than from a nearby well. Once that was discovered, the customer's service was quickly restored when a ruptured valve was repaired.

12. The water system is in a state of disrepair. The well houses protecting the wells are rotting and are not maintained. In addition, the water mains are shallowly buried and are prone to freeze and rupture in cold weather.

13. The water system has not had a required certified operator in place since April 1, 2016. If something goes wrong with the system, there is no one capable of making repairs. Equally as important, there is no one to collect necessary water samples to ensure the safety of the water system. Such samples have not been taken for more than a year.

14. The Ridge Creek Water and Ridge Creek Development water system is out of compliance with multiple DNR regulations. An affidavit prepared by Lance Dorsey, Chief of the Compliance & Enforcement Section of the Public Drinking Water Branch of the Missouri Department of Natural Resources indicated the following violations:

- The Ridge Creek Entities are in violation of 10 CSR 60-4.020(7)(8) for failure to meet the maximum contaminant level (MCL) for *E.coli* bacteria during the sampling periods of November 2015 and January 2016;

- The Ridge Creek Entities are in violation of 10 CSR 60-4.020(7)(A) for failure to meet the MCL for total coliform bacteria during the sampling periods of October, November and December of 2015 and January and February of2016;

- The Ridge Creek Entities are in violation of 10 CSR 60-14.010 (4)(A) and 10 CSR 60-14.010(4)(A)1, since April 2016 and continuing, for failure to place the direct supervision of the System under the responsible charge of a chief operator that possesses a valid certificate equal to or greater than the classification of the System;

- The Ridge Creek Entities are in violation of 10 CSR 60-3.030(3)(A)3 for failure to have a sufficient number of operators to provide proper operation and maintenance of all source, treatment, storage and distribution facilities so that the System meets all requirements of Sections 640.100-640.140, RSMo and regulations promulgated thereunder;

- The Ridge Creek Entities are in violation of 10 CSR 60-4.022(3) for failure to collect routine drinking water samples for the testing of total coliform bacteria during the sampling periods of April through December of 2016 and for January through March of 2017;

- The Ridge Creek Entities are in violation of 10 CSR 60-8.010(2)(8)(3) for failure to repeat and recertify biweekly performance of public notification for the continuing Boil Water Order beginning June 17, 2016;

- The Ridge Creek Entities are in violation of 10 CSR 60-7.010(10) and 10 CSR 60-8.010(2) for failure to certify public notice for failure to meet the maximum MCL for E.coli bacteria during the sampling periods of November 2015 and January 2016; and

- The Ridge Creek Entities are in violation of 10 CSR 60-3.010(1)(D) for failure to submit an application for or obtain a Permit to Dispense water from the Department.

15. Four experienced Commission Staff inspectors offered their expert opinions that Ridge Creek Water and Ridge Creek Development are unable, or unwilling to provide safe and adequate service to their water customers.

16. Staff recommends the Commission appoint attorney Terry Jarrett as interim receiver and that it recommend to the circuit court that Mr. Jarrett be appointed as receiver. The Commission finds that Mr. Jarrett is knowledgeable about regulatory matters and will be an appropriate interim receiver to take control of these companies.

17. Michael and Denise Stoner have consented to the appointment of an interim receiver and receiver to take over Ridge Creek Water and Ridge Creek Development to provide service to their water customers. Their willingness to consent to the appointment of a receiver indicates their desire to cease providing service to their customers and raises the possibility that if a receiver is not quickly appointed, they may abandon the water system.

Conclusions of Law

A. Subsection 386.020(59), RSMo 2016 defines "water corporation" as including:

> every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water.

B. Subsection 393.145.1, RSMo 2016 provides in relevant part:

> If, after hearing, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer customer connections is unable or unwilling to provide safe and adequate service, has been actually or effectively abandoned by its owners, … the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. …

C. Subsection 393.145.2, RSMo 2016 gives the Commission authority to appoint an interim receiver in the same order in which it authorizes it general counsel to pursue appointment of a receiver in circuit court as provided in subsection 1 of that statute.

D. Subsection 393.145.3, RSMo 2016 requires the Commission to attach an official copy of its determination under subsection 1 of that statute when it files its petition in circuit court for appointment of a receiver. The Commission may not file its petition in circuit court until that determination is final and unappealable.

E. Subsection 386.490.2, RSMo 2016 provides that Commission orders take effect 30 days after they are issued, unless some other effective date is established by the Commission.

F. The Missouri Court of Appeals has held that any shortening of the effective date of a Commission order to less than ten days is presumptively unreasonable. To overcome that presumption if challenged, the Commission would need to demonstrate that the circumstances surrounding the case are so extraordinary as to clearly warrant further encroachment on the time provided to the parties to exercise their right to apply for rehearing and/or appeal.[1]

Decision

The Commission has found that Ridge Creek Water and Ridge Creek Development are water corporations as that term is defined by statute. They provide water service to fewer than 8,000 customer connections and are subject to the provisions of Section 393.145.1, RSMo 2016. Further, the Commission has found that Ridge Creek Water and Ridge Creek Development are unable or unwilling to provide safe and adequate service to their customers.

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[1] *State ex rel. Office of Public Counsel v. Public Serv. Com'n*, 409 S.W.3d 522 (Mo. App. W.D. 2013).

In these circumstances, the Commission will grant Staff's Petition for an order directing its general counsel to petition the circuit court to appoint a receiver. The Commission will also appoint an interim receiver as contemplated by statute.

Normally, the Commission directs that its orders take effect at least ten days after they are issued to allow parties an opportunity to request rehearing and subsequently appeal its orders. In this case, the evidence demonstrates that the public health is at risk until an interim receiver is appointed to take charge of this water system and begin to provide safe and adequate water service. The Office of the Public Counsel, the only other party to appear at the evidentiary hearing, urges the Commission to appoint an interim receiver to protect the public. Further, the owners of Ridge Creek Water and Ridge Creek Development have indicated their consent to the appointment of an interim receiver for both companies and have chosen to not appear at the evidentiary hearing. In addition, there is a danger that if an interim receiver is not quickly appointed, the current owners may abandon the water system. For those reasons, and in these unusual circumstances, the Commission will make its order effective on May 13, 2017. That means if someone wants to request rehearing in this case, they will have ten days to request rehearing. However, the Commission will make its appointment of Terry Jarrett as interim receiver effective immediately, thus immediately protecting the public from the threat of unsafe and inadequate water service and the risk that the water system will be abandoned.

THE COMMISSION ORDERS THAT:

1. The Commission's General Counsel is directed to petition the Circuit Court of Cole County to appoint Terry Jarrett as receiver for Ridge Creek Water Company, LLC and for Ridge Creek Development, LLC.

2. Terry Jarrett, Healy Law Offices, LLC, 514 E. High Street, Suite 22, Jefferson City, Missouri 65101, is appointed as interim receiver for Ridge Creek Water Company, LLC and for Ridge Creek Development, LLC.

3. Terry Jarrett shall be paid as provided in the fee schedule attached to this order as attachment A.

4. This report and order shall become effective on May 13, 2017, except for the appointment of Terry Jarrett as interim receiver, which shall be effective immediately.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Rupp, and Coleman, CC., concur;
Kenney and Stoll, CC., abstain,
and certify compliance with the
provisions of Section 536.080, RSMo

Dated at Jefferson City, Missouri,
on this 3rd day of May, 2017.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2017-0175**
	)	
Kansas City Power & Light Company	)	
And	)	
KCP&L Greater Missouri Operations	)	
Company,	)	
	)	
Respondents.	)	

ORDER APPROVING STIPULATION AND AGREEMENT

Evidence, Practice and Procedure

§8. Stipulation

The Commission approved a stipulation and agreement to resolve the complaint regarding operation of the Allconnect Program whereby the utilities agreed to pay $50,000 to the Public School Fund of the State of 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 June, 2017.

Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2017-0175**
	)	
Kansas City Power & Light Company	)	
	)	
And	)	
	)	
KCP&L Greater Missouri Operations Company,	)	
	)	
Respondents.	)	

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: June 14, 2017 Effective Date: June 24, 2017

On June 5, 2017, the Office of the Public Counsel, Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (GMO) filed a stipulation and agreement to resolve Public Counsel's complaint against KCP&L and GMO regarding operation of the Allconnect Program. Among other things, KCP&L and GMO agree to pay $50,000 to the Public School Fund of the State of Missouri in lieu of Public Counsel's pursuit of a penalty. They also agree that amount will not be recovered from their ratepayers.

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

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

THE COMMISSION ORDERS THAT:

1. The Stipulation and Agreement filed on June 5, 2017, is approved as a resolution of the Office of the Public Counsel's complaint against Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order.

2. The procedural schedule, previously suspended, is cancelled.

3. This order shall be effective on June 24, 2017.

4. This file shall be closed on June 25, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Assessment Against	)	
the Public Utilities in the State of Missouri	)	**Case No. AO-2017-0344**
for the Expenses of the Commission for the	)	
Fiscal Year Commencing July 1, 2017	)	

ASSESSMENT ORDER FOR FISCAL YEAR 2018

Public Utilities

§1. Generally

The Commission established the assessment amount for fiscal year 2018.

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 June, 2017.

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, 2017	))))	**Case No. AO-2017-0344**

ASSESSMENT ORDER FOR FISCAL YEAR 2018

Issue Date: June 22, 2017 Effective Date: July 1, 2017

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year commencing July 1, 2017. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo and amount to $22,002,755. Within that total, the Commission estimates the expenses directly attributable to the regulation of the six groups of public utilities: electrical, gas, heating, water, sewer and telephone, which total for all groups $12,545,779. In addition to the separately identified costs for each utility group, the Commission estimates the amount of expenses that could not be attributed directly to any utility group of $9,456,976.

The Commission estimates that the amount of Federal Gas Safety reimbursement will be $490,000. The unexpended balance in the Public Service Commission Fund in the hands of the State Treasurer on July 1, 2017, is estimated to be $2,774,963. The Commission deducts these amounts and

estimates its Fiscal Year 2018 Assessment to be $18,737,792. 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 2016, 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	$ 11,093,907
Gas	$ 3,939,379
Steam/Heating	$ 53,050
Water & Sewer.....	$ 2,231,490
Telephone.....	$ 1,419,966
Total	$ 18,737,792

The Commission will collect an assessment for the Office of Public Counsel which is included in the total assessment amount of $18,737,792.

The Commission allocates a proportionate share of the $18,737,792 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, 2017. The assessment shall be due and payable on or before July 15, 2017, or at the option of each public utility, it may be paid in equal quarterly installments on or before July 15, 2017, October 15, 2017, January 15, 2018, and April 15, 2018. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue the day they are received.

All checks shall be made payable to the Director of Revenue, State of Missouri; however, these checks must be sent to:

Missouri Public Service Commission
Budget and Fiscal Services Department
P.O. Box 360
Jefferson City, MO, 65102-0360

THE COMMISSION ORDERS THAT:

1. The assessment for fiscal year 2018 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, 2017.

4. Each public utility shall pay its assessment as set forth herein.

5. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue the day they are received.

6. This order shall become effective on July 1, 2017.

BY THE COMMISSION

Morris L Woodruff

Morris Woodruff
Secretary

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

Morris L. Woodruff, Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

REPORT AND ORDER

Reversed and remanded: *Grain Belt Express Clean Line, LLC v. Public Service Commission,* 555 S.W.3d 469 (Mo banc 2018)

Certificates

§6. Jurisdiction and powers of the State Commission

The Commission found that it must follow the direction of a court of appeals in finding the company did not meet its burden of proof to be granted a Certificate of Convenience and Necessity by not providing evidence of compliance with county approval to erect light or electric poles.

§30. Municipal or county action

County commission approval to erect light or electric poles must take place before the Commission can order the granting of a Certificate of Convenience and Necessity in cases necessitating county assent for the installation of light or electric poles, as directed by a court of appeals.

Electric

§3. Certificate of convenience and necessity

County commission approval to erect light or electric poles must take place before the Commission can order the granting of a Certificate of Convenience and Necessity in cases necessitating county assent for the installation of light or electric poles, as directed by a court of appeals.

§9. Jurisdiction and powers of the State Commission

The Commission found that it must follow the direction of a court of appeals in finding the company did not meet its burden of proof to be granted a Certificate of Convenience and Necessity by not providing evidence of compliance with county approval to erect light or electric poles.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

REPORT AND ORDER

Issue Date: August 16, 2017

Effective Date: September 15, 2017

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

APPEARANCES

GRAIN BELT EXPRESS CLEAN LINE, LLC:

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SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

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

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

[1] All statutory references are to the Missouri Revised Statutes (2016), unless otherwise noted.

The Commission held a prehearing conference and established a procedural schedule. The Commission conducted local public hearings for members of the general public in each of the eight counties where the proposed transmission line would be located.[2] The Commission held an evidentiary hearing on March 20-24, 2017.[3] During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Does the evidence establish that the Commission may lawfully issue to GBE the certificate of convenience and necessity it is seeking for the high-voltage direct current transmission line and converter station with an associated AC switching station and other AC interconnecting facilities?
2. Does the evidence establish that the high-voltage direct current transmission line and converter station for which GBE is seeking a certificate of convenience and necessity are necessary or convenient for the public service, within the meaning of that phrase in Section 393.170, RSMo 2016?
3. If the Commission grants the CCN, what conditions, if any, should the Commission impose?
4. If the Commission grants the CCN, should the Commission exempt GBE from complying with the reporting requirements of Commission rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175, and 4 CSR 240-3.190(1), (2) and (3) (A)-(D)?

[2] Transcript, Vols. 2-9.
[3] Transcript, Vols. 10-19. The Commission admitted the testimony of 54 witnesses and 135 exhibits into evidence during the evidentiary hearing.

The parties submitted initial, reply, and supplemental post-hearing briefs. After the filing of two post-hearing motions[4], oral arguments were conducted on August 3, 2017,[5] and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.[6]

II. Findings of Fact

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

1. GBE is a limited liability company organized under the laws of the State of Indiana. GBE is a wholly-owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC ("Clean Line").[7]

2. GBE filed its application for a CCN pursuant to Section 393.170.1, RSMo, and Commission administrative rules.[8]

3. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a

[4] MLA's Motion to Dismiss Application filed on July 4, 2017 and GBE's Motion for Waiver or Variance of Filing Requirements filed on June 29, 2017.
[5] Transcript, Vol. 20. At the oral arguments, the Commission admitted four additional exhibits into the record and took official notice of Section 393.170, RSMo 1949.
[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 4 CSR 240-2.150(1).
[7] Ex.100, Skelly Direct, p. 3.
[8] Ex. 100, Skelly Direct, p. 4.

notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[9] Staff participated in this proceeding.

4. The transmission line proposed to be constructed by GBE in the application is an approximately 780-mile, overhead, multi-terminal +600 kilovolt ("kV") high-voltage, direct current ("HVDC") transmission line and associated facilities (collectively, the "Project").[10]

5. The Project would traverse the states of Kansas, Missouri, Illinois and Indiana, including approximately 206 miles in Missouri.[11] The Project would deliver 500 megawatts ("MW") of wind-generated electricity from western Kansas to customers in Missouri, and another 3,500 MW to states further east.[12]

6. The Project would have three converter stations. One converter station would be located in western Kansas, where wind generating facilities would connect to the Project via alternating current ("AC") lines. The two other converter stations in eastern Missouri and eastern Illinois would deliver electricity to the AC grid through interconnections with transmission owners in the systems of Midcontinent Independent System Operator, Inc. ("MISO") and PJM Interconnection, LLC ("PJM"), respectively.[13]

7. The Missouri portion of the Project would be located in the Missouri counties of Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls.[14]

8. The Project's development, construction, and operations costs would be borne by the investors in Clean Line and the transmission customers. The Project's costs

[9] Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).
[10] Ex. 100, Skelly Direct, p. 3.
[11] Ex. 100, Skelly Direct, p. 4.
[12] Ex. 108, Galli Direct, p. 4.
[13] Ex. 108, Galli Direct, p. 4-7; Ex. 104, Berry Direct, p. 4-5.
[14] Ex. 100, Skelly Direct, p. 4.

would not be recovered through the cost allocation process of any regional transmission organization approved by the Federal Energy Regulatory Commission ("FERC").[15]

9. The Project is a participant-funded, "shipper pays" transmission line. GBE would recover its capital costs by entering into voluntary, market-driven contracts with entities that want to become transmission customers of the Project.[16]

10. GBE would offer transmission service through an open access transmission tariff that would be filed with and subject to the jurisdiction of the FERC under the Federal Power Act and FERC regulations. GBE customers would consist principally of wind energy producers in western Kansas and wholesale buyers of electricity, such as utilities, competitive retail energy suppliers, brokers, and marketers.[17]

11. The Project would not provide service to end-use customers or provide retail service in Missouri, so the Project would not be rate-regulated by the Commission.[18]

12. In 2012, GBE received assent from the county commissions of Buchanan, Caldwell, Carroll, Chariton, Clinton, Monroe, Ralls, and Randolph counties authorizing GBE to construct and operate poles, lines, conduits, and conductors for utility purposes through, along, and across the public roads and highways of those counties.[19]

13. In 2014, the county commissions of Clinton, Chariton, Caldwell, Ralls, and Monroe counties attempted to rescind the county assents previously granted in 2012.[20]

14. GBE does not have an assent at this time from the Caldwell County Commission to cross the public roads and highways of that county. By judgment dated

[15] Ex. 100, Skelly Direct, p. 7; Ex. 104, Berry Direct, p. 8.
[16] Ex. 100, Skelly Direct, p. 12; Ex. 104, Berry Direct, p. 8; Ex. 111, Kelly Direct, p. 4.
[17] Ex. 100, Skelly Direct, p. 23-24; Ex. 104, Berry Direct, p. 6; Ex. 111, Kelly Direct, p. 4-5.
[18] Ex. 100, Skelly Direct, p. 24.
[19] Ex. 300, Lowenstein Rebuttal, p. 33, Schedule LDL-3.
[20] Ex. 300, Lowenstein Rebuttal, p. 33, Schedule LDL-4.

October 7, 2015, entered in Case No. 14CL-CV00222, the Caldwell County Circuit Court held that the Caldwell County Commission violated the Missouri Sunshine Law when it gave its assent, rendering that assent invalid and void.[21]

15. In a prior and separate case, Ameren Transmission Company of Illinois ("ATXI") requested a CCN from the Commission to construct and operate an interstate electric transmission line running through several counties in Missouri that would not serve retail customers. ATXI did not have assent from any of the counties through which the proposed transmission line would traverse. In granting the CCN, the Commission concluded that such assents were required by its rules and by Section 229.100, RSMo and imposed a condition that ATXI must obtain the assent from each such county before the CCN became effective.[22]

16. ATXI had argued to the Commission, in part, that it need not obtain county assents because ATXI applied to the Commission for a line certificate under Section 393.170.1 and not an area certificate under Section 393.170.2, RSMo.[23] ATXI claimed that line certificates do not require such county assents.[24]

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[21] Ex. 320; Ex. 200, Dietrich Rebuttal, p. 3; Ex. 201, Staff Rebuttal Report, p. 2.

[22] Ex. 375, Report and Order, *In the Matter of the Application of Ameren Transmission Co. of Illinois for Other Relief or, in the Alternative, A Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain & Otherwise Control & Manage A 345,000-Volt Elec. Transmission Line from Palmyra, Missouri, to the Iowa Border & Associated Substation Near Kirksville, Missouri*, EA-2015-0146, 2016 WL 1730118 (Apr. 27, 2016).

[23] Ex. 376, Initial Post-hearing Brief of Ameren Transmission Co. of Illinois, *In the Matter of the Application of Ameren Transmission Co. of Illinois for Other Relief or, in the Alternative, A Certificate of Pub. Convenience & Necessity Authorizing It to Construct, Install, Own, Operate, Maintain & Otherwise Control & Manage A 345,000-Volt Elec. Transmission Line from Palmyra, Missouri, to the Iowa Border & Associated Substation Near Kirksville, Missouri,* EA-2015-0146, p. 60-74.

[24] *Id.*

III. Conclusions of Law

The authority for the Commission to approve the Project when necessary or convenient for the public service, including the authority to impose reasonable conditions, is stated in Section 393.170, RSMo.[25] GBE is subject to the jurisdiction of the Commission because it is an "electrical corporation"[26] and "public utility"[27] owning, operating, controlling or managing "electric plant"[28]. While the Commission only has authority over facilities that are devoted to public use[29], an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as

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[25] 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

[26] "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others. (emphasis added).

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

[28] "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power. (emphasis added)

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

a public utility.[30] Since GBE brought the application, it bears the burden of proof.[31] The burden of proof is the preponderance of the evidence standard.[32] In order to meet this standard, GBE must convince the Commission it is "more likely than not" that its allegations are true.[33]

The threshold issue for determination is whether the Commission may lawfully issue to GBE the certificate of convenience and necessity it seeks. The arguments of the parties involve whether proof of county assents under Section 229.100, RSMo,[34] affects the Commission's statutory authority to grant a CCN in this case. Section 229.100 requires assent of the county commission before a company may erect poles for the suspension of electric light or power wires under or across the public roads or highways of that county.

The most recent guidance from the courts on this issue is in the *Matter of Ameren Transmission Co. of Illinois*[35]. ATXI sought a certificate for an interstate electric transmission line under Section 393.170, as GBE has also requested. ATXI proposed an

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[30] *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 9 S.W.2d at 592. While the Buchanan County transmission company was determined not to be a public utility because it transmitted electricity to a private company for private use, the court clearly implied that if the electricity had been transmitted to a public utility for public use the transmission company would also be considered to be a public utility. *The Empire District Electric Company v. Progressive Industries, Inc.,* Report and Order, 13 Mo.P.S.C. (N.S.) 659, 668-669 (April 2, 1968).

[31] "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).

[32] *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).

[33] *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).

[34] "No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission."

[35] *Matter of Ameren Transmission Co. of Illinois,* No. WD 79883, 2017 WL 1149139 (Mo. Ct. App. Mar. 28, 2017), reh'g denied (Apr. 27, 2017), transfer denied (Apr. 27, 2017), transfer denied (June 27, 2017).

interstate transmission line that "does not generate, distribute, or sell electricity to the general public or serve any retail service territory."[36] ATXI had not yet received approval from the relevant county commissions under Section 229.100 at the time the Commission issued its Order, but the Commission granted a CCN with the condition that ATXI obtain all necessary county assents before exercising the authority in the CCN. On appeal, the Western District Court of Appeals determined that the Commission lacked authority to grant a CCN without evidence that ATXI had received those county assents, even if the Commission made the CCN conditional on ATXI obtaining the assents in the future. The Court stated:

> By statute and by rule, the PSC is authorized to issue a CCN only after the applicant has submitted evidence satisfactory to the PSC that the consent or franchise has been secured by the public utility. Neither statute nor rule authorizes the PSC to issue a CCN *before* the applicant has obtained the required consent or franchise.
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> *****
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> Our interpretation of the statute—that it mandates that the applicant receive the consent of local government authorities before the PSC issues a CCN—gives plain meaning to the legislature's use of the mandatory term "shall" when it describes what documents the applicant must submit to the PSC before a CCN will be issued. Accordingly, county commission assents required by section 229.100 and 4 CSR 240-3.105(1)(D)1 must be submitted to the PSC *before* the PSC grants a CCN.
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> The PSC's issuance of a CCN contingent on ATXI's subsequent provision of required county commission assents was unlawful as it exceeded the PSC's statutory authority.[37]

The Western District Court of Appeals vacated the Commission's Report and Order issuing a CCN to ATXI. While the Commission disagreed with the legal analysis and conclusions in that opinion and asked the Supreme Court of Missouri to accept transfer of

[36] *Matter of Ameren Transmission Co. of Illinois*, No. WD 79883, 2017 WL 1149139, *2 (Mo. Ct. App. Mar. 28, 2017).
[37] *Matter of Ameren Transmission Co. of Illinois*, No. WD 79883, 2017 WL 1149139, *6, 8 (Mo. Ct. App. Mar. 28, 2017).

the case[38], that Court declined. The Western District ATXI opinion is now final and binding on the Commission.

ATXI, in its CCN application case at the Commission, File No. EA-2015-0146, did apply for and receive a line certificate, not an area certificate. The issue of prior county assents for line versus area CCNs was argued extensively at the Commission. ATXI proposed to build an interstate transmission line to transmit electricity for the public use, but that line would not generate, distribute, or sell electricity to the general public or serve any retail service territory, so by definition it could not result in an area certificate. ATXI had not yet obtained the assents required from all the county commissions through which the transmission line would be located.

In this GBE case, as in *Ameren Transmission Co.*, there is a disputed issue as to whether the Commission has the statutory authority to grant a line certificate to GBE without it having filed the required county assents. However, *Ameren Transmission Co.* clearly states that "county commission assents required by section 229.100 and 4 CSR 240-3.105(1)(D)1 must be submitted to the PSC *before* the PSC grants a CCN."[39] (emphasis by the Court).

There are no material factual distinctions between *Ameren Transmission Co.* and this GBE case that would permit the Commission to reach a different result on the question of statutory authority to grant a CCN in this case. Accordingly, *Ameren Transmission Co.* and its plain language regarding the necessity of obtaining prior county assents apply to the

[38] The Commission asserted that transfer is appropriate because the Court of Appeals interpreted Section 393.170 contrary to the existing case law interpreting that statute; the roles the legislature intended for the Public Service Commission under Section 393.170 and for the county commissions under Section 229.100 should be clearly delineated to ensure that both the Public Service Commission and the county commissions can fulfill their appointed roles; and the Commission is not authorized to decide the validity or legal effect of a county assent under Section 229.100 in the course of a hearing under Section 393.170.

[39] *Matter of Ameren Transmission Co. of Illinois*, No. WD 79883, 2017 WL 1149139, at *8 (Mo. Ct. App. Mar. 28, 2017).

GBE application even though that opinion did not specifically cite to subsection 1 of Section 393.170, the subsection under which GBE requested a CCN. GBE did not submit evidence of county assents in this case. There is clear evidence in the record that GBE lacks a county assent from at least one county, Caldwell County. Under the Court's direction set forth in *Ameren Transmission Co.*, the Commission cannot lawfully issue a CCN to GBE until the company submits evidence that it has obtained the necessary county assents under Section 229.100.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that GBE has failed to meet, by a preponderance of the evidence, its burden of proof to demonstrate that it has obtained all county assents under Section 229.100 necessary for a certificate of convenience and necessity as required by *Ameren Transmission Co.*. Therefore, the Commission will deny the GBE application. Since the Commission's determination that it lacks the statutory authority to issue a CCN at this time resolves the case, it is unnecessary for the Commission to consider and decide the remaining disputed issues.

There are several motions that are currently pending a determination, as follows:

1. MLA's Motion to Dismiss Application filed on July 4, 2017;
2. GBE's Motion for Waiver or Variance of Filing Requirements filed on June 29, 2017;
3. MLA's Motion to Strike MJMEUC's Supplementation of Hearing Exhibit 479 filed on June 14, 2017;
4. GBE's Motion to Supplement the Record filed on May 2, 2017; and
5. MLA's Motion to Strike Certain Material in Reply Brief of GBE filed on April 27, 2017.

Since the Commission has concluded that under *Ameren Transmission Co.* the GBE application must be denied, the pending motions are rendered moot and will be denied.

THE COMMISSION ORDERS THAT:

1. Grain Belt Express Clean Line LLC's application for a certificate of convenience and necessity filed on August 30, 2016, is denied.

2. All pending motions described in the body of this order are denied.

3. This order shall become effective on September 15, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Stoll, C., concurs.
Hall, Chm., Kenney, Rupp, and
Coleman, CC., concur, with separate
concurring opinion attached;
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 16th day of August, 2017.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

CONCURRING OPINION OF COMMISSIONERS HALL, KENNEY, RUPP, AND COLEMAN IN THE REPORT AND ORDER

We concur with the Report and Order issued on August 16, 2017, which denied the application of Grain Belt Express Clean Line LLC ("GBE") for a certificate of convenience and necessity ("CCN"). The Commission concluded in that Report and Order that GBE failed to meet its burden of proof to demonstrate it had obtained all county assents under Section 229.100, RSMo 2016, necessary for a CCN as required by Section 393.170, RSMo. The Report and Order reached the correct legal conclusion that GBE's application must be denied, based on direction from the Missouri Western District Court of Appeals in the *Matter of Ameren Transmission Co. of Illinois*[1], which was a separate but similar case. While the Commission disagreed with the legal analysis and conclusions in that opinion and asked the Supreme Court of Missouri to accept transfer of the case[2], that Court

[1] *Matter of Ameren Transmission Co. of Illinois,* No. WD 79883, 2017 WL 1149139 (Mo. Ct. App. Mar. 28, 2017), reh'g denied (Apr. 27, 2017), transfer denied (Apr. 27, 2017), transfer denied (June 27, 2017).

[2] The Commission asserted that transfer is appropriate because the Court of Appeals interpreted Section 393.170 contrary to the existing case law interpreting that statute; the roles the legislature intended for the Public Service Commission under Section 393.170 and for the county commissions under Section 229.100 should be clearly delineated to ensure that both the Public Service Commission and the county commissions can fulfill their appointed roles; and the Commission is not authorized to decide the validity or legal effect of a county assent under Section 229.100 in the course of a hearing under Section 393.170.

declined. That Western District opinion is binding on the Commission, and gave the Commission no choice but to deny the GBE application.

However, had it not been for the *Matter of Ameren Transmission Co.* opinion, we would have granted the GBE application, as the evidence showed that the GBE project is "necessary or convenient for the public service".[3] When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which follow:

a) There must be a need for the service;
b) The applicant must be qualified to provide the proposed service;
c) The applicant must have the financial ability to provide the service;
d) The applicant's proposal must be economically feasible; and
e) The service must promote the public interest.[4]

The parties have not disputed that GBE is qualified or has the financial ability to provide the service, and in our view the evidence in the record shows that GBE also meets the remaining three factors that were in dispute– need, economic feasibility, and public interest.

Need for the service

The GBE project is needed primarily because of the benefits to the members of the Missouri Joint Municipal Electric Utility Commission ("MJMEUC")[5] and their hundreds of

[3] Section 393.170, RSMo 2016.

[4] *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).

[5] MJMEUC's members include the cities of Centralia, Columbia, Hannibal, Kirkwood and the 35 MoPEP cities: Albany, Ava, Bethany, Butler, Carrollton, Chillicothe, El Dorado Springs, Farmington, Fayette, Fredericktown, Gallatin, Harrisonville, Hermann, Higginsville, Jackson, Lamar, La Plata, Lebanon, Macon, Marshall, Memphis, Monroe City, Odessa, Palmyra, Rock Port, Rolla, Salisbury, Shelbina, St. James, Stanberry, Thayer, Trenton, Unionville, Vandalia and Waynesville.

thousands of customers, who had committed to purchase at least 100 MW of wind power utilizing transmission service purchased from GBE. MJMEUC planned to use cheaper wind power from GBE to replace the 100 MW of energy and capacity it currently purchases from Illinois Power Marketing, through a contract set to expire in 2021. MJMEUC's power purchase agreement with Infinity Wind obligated MJMEUC take that GBE power and pay for it, assuming the GBE line was built, and Infinity was contractually obligated to provide that wind energy or forfeit security payments. There was some dispute about the amount of savings that MJMEUC and its customers would have received by purchasing the cheaper wind power through GBE, but MJMEUC calculates that their members would have saved approximately $9-11 million annually. Evidently, the elected decision makers for MJMEUC's member cities recognized a need for these savings, and there was also evidence that wind power transmitted to Missouri would have been of interest to commercial and industrial customers, such as Walmart, Missouri Industrial Energy Consumers, and the Missouri Retailers Association.

Of course, MJMEUC and Missouri industrial customers are not the only energy customers we must consider in this analysis. In a state whose regulated utilities participate in two regional transmission organizations, it is appropriate to consider the project's effect on other market participants. There was substantial evidence of demand for this project, both on the production and delivery side, within the relevant regional markets. For instance, GBE presented evidence of a commitment by an Illinois load-serving entity to purchase 50 MW of the project's transmission service. On the production side, during open solicitations in 2015 and 2016, transmission service requests for the line far exceeded the

total available capacity of the project. Clearly, there is a demonstrable need for the service the GBE project offered both in Missouri and in the regions that affect Missouri energy markets.

Economic feasibility

The GBE project is economically feasible because it links customers in Missouri who desire to purchase low-cost wind power from western Kansas with wind generation companies like Infinity Wind who propose to supply that energy, all under a business model under which GBE assumed the financial risk of building and operating the transmission line. Moreover, the cost of the project would not have been recovered from Missouri ratepayers through either Southwest Power Pool (SPP) or Midcontinent Independent System Operator, Inc. (MISO) regional cost allocation tariffs but rather by the entities contracting to transmit energy over the line.

GBE also presented a credible levelized cost of energy analysis from witness David Berry to show that the cost to bring wind energy from western Kansas to Missouri and eastward using the GBE project is the lowest-cost resource option compared to Missouri wind, combined cycle gas, and Missouri utility-scale solar generation. While the MJMEUC/Infinity contracts demonstrate the economic feasibility of the GBE project compared to MISO wind, it is the 3500 MW portion of the project to be sold in PJM that demonstrates the financial viability of the project overall, since power prices for PJM are generally $10/MWh higher than prices paid for the energy sold into the MISO market in Missouri. When GBE conducted its open solicitation, it offered a price that was higher than both the MJMEUC “first-mover” price and the normal Missouri rate, and it received bids that

were 6½ times the capacity available on the project, which is a solid indication of economic feasibility.

Public interest

It is the Commission's responsibility to balance the interests of all stakeholders, including the affected landowners, to determine what is in the best interest of the general public as a whole. The evidence in the case demonstrated that the GBE project would have created both short-term and long-term benefits to ratepayers and all the citizens of the state. In our view, the broad economic, environmental, and other benefits of the project to the entire state of Missouri outweigh the interests of the individual landowners.

The GBE project would have lowered energy production costs in Missouri by $40 million or more under future energy scenarios developed by MISO and would have had a substantial and favorable effect on the reliability of electric service in Missouri, particularly through its effect on wind diversity in the region. Geographic diversity in wind resources inevitably helps to reduce system variability and uncertainty in regional energy systems. In addition, the project would have provided positive environmental impacts, since displacement of fossil fuels for wind power would reduce emissions of carbon dioxide, sulfur dioxide, nitrogen oxide, particulates and organic compounds, reduce waste by-products, and reduce water usage in Missouri.

The Missouri Department of Economic Development estimated that the construction phase of the project would have supported 1,527 total jobs over three years, created $246 million in personal income, $476 million in GDP, and $9.6 million in state general revenue for the state of Missouri, and $249 million in Missouri-specific manufacturing and

professional service contracting spending. The project would also have resulted in significant property tax benefits to affected counties, a total of approximately $7.2 million in the first year of operation. In that first year, Randolph County alone would have received more than $720,000 in additional tax revenue. In the first year of operation, the project would have resulted in approximately $14.97 million in easement payments and created 91 jobs, $17.9 million worth of personal income, and $9.1 million in gross domestic product.

Public policy for a state must be found in a constitutional provision, a statute, a regulation promulgated pursuant to statute, or a rule, policy, or initiative created by a governmental body. In Missouri, state energy policy can be found in laws such as the Renewable Energy Standard, established by vote of the Missouri public in 2008, and the Energy Efficiency Investment Act, promulgated by our legislature in 2013, as well as the Comprehensive State Energy Plan, an initiative implemented by the Missouri Division of Energy in 2015. The public benefits described above – low cost, reliable energy with positive environmental impacts – could not in one fell swoop address all the energy policy needs of Missouri, but it would have been a solid step forward and could have served as a bridge to our energy future.

There can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement towards renewable energy in general and wind energy specifically. Wind energy provides great promise as a source for affordable, reliable, safe,

and environmentally-friendly energy. The GBE project would facilitate this movement in Missouri, would thereby benefit Missouri citizens, and is therefore in the public interest.

Finally, we are sympathetic to the sincere concerns expressed by the landowners who appeared before the Commission during local public hearings in this case. However, many of those concerns could have been addressed through carefully considered conditions placed on the CCN. We would have voted to include many conditions on granting the CCN that would have provided necessary protections for Missouri landowners, ratepayers, and citizens. These conditions were proposed by the parties to the case, many of which were agreed to by GBE. Some of the proposed conditions included financing, interconnection studies and safety, protection of nearby utility facilities, emergency restoration plans, construction and clearing, maintenance and reporting, landowner interactions and right-of-way acquisition, agricultural mitigation protocols, and establishment of a decommissioning fund, the first such fund for a transmission line in the United States. This Commission's ability to impose such protections for Missouri citizens would be lost if GBE must now bypass Missouri and obtain approval for the project from the U.S. government based on federal law. We would have preferred to grant the application and retain those necessary protections.

With the concerns set forth above, we concur with the Report and Order issued in this case on August 16, 2017.

Daniel Y. Hall
Chairman

William P. Kenney
Commissioner

Scott T. Rupp
Commissioner

Maida J. Coleman
Commissioner

Dated at Jefferson City, Missouri
On this 16th day of August, 2017

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition of Missouri-American Water Company for Approval to Establish an Infrastructure System Replacement Surcharge (ISRS).	))))	**File No. WO-2017-0297** Tariff No. JW-2017-0238

ORDER GRANTING MOTION TO DISMISS

Rates

§128. Water

In File No. WO-2015-0211, the Commission found Missouri American Water Company was eligible for an Infrastructure System Replacement Surcharge (ISRS) because the county in which it operates had one million inhabitants at the time the ISRS statute was passed. The Office of Public Counsel (OPC) appealed that decision, and the Court of Appeals found in favor of OPC in an unreported opinion. While OPC's appeal was eventually dismissed as moot by the Supreme Court of Missouri, the Commission finds the Court of Appeals' analysis, though not binding, to be instructive and persuasive. The Commission finds that the county in which MAWC operates does not have more than one million inhabitants based upon the 2010 census, as required by the currently effective Section 393.1003.1. Therefore, MAWC does not qualify for an ISRS under the express terms of Section 393.1003, and its petition must be dismissed.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 16th day of August, 2017

In the Matter of the Petition of Missouri-American Water Company for Approval to Establish an Infrastructure System Replacement Surcharge (ISRS).	))))	**File No. WO-2017-0297** Tariff No. JW-2017-0238

ORDER GRANTING MOTION TO DISMISS

Issue Date: August 16, 2017 Effective Date: August 26, 2017

On May 15, 2017, Missouri-American Water Company ("MAWC") filed an application and petition ("petition") with the Commission pursuant to Sections 393.1000, 393.1003, and 393.1006, RSMo 2016, and Commission Rules 4 CSR 240-2.060 and 3.650.[1] In the petition, MAWC requests that the Commission authorize it to change its Infrastructure System Replacement Surcharge ("ISRS"). On June 30, the Office of the Public Counsel ("OPC") filed a Motion to Dismiss.

Motion

OPC alleges that the Commission must dismiss the petition because MAWC does not meet the statutory standard for an ISRS. In particular, OPC states that the county in which MAWC operates does not have more than one million inhabitants, as required by Section 393.1003.1.

[1] Calendar references are to 2017.

MAWC responded, citing HB 451's recent passage. The new language in that bill provides that once the county in which MAWC operates has come under the operation of a law with a population standard, a subsequent change in population shall not remove the county from the operation of that law.[2] Relying on this, MAWC contends it is eligible for the ISRS.

Discussion

As even MAWC admits, HB 451 will not become effective until August 28.[3] Thus, because MAWC filed its petition before August 28, the Commission cannot apply HB 451 to the petition.

Furthermore, because the date the petition was filed is the operative date for determining ISRS eligibility under the statute, the Commission would reach the same result even if it delayed ruling on OPC's motion until August 28 or later. HB 451 will expand the population "grandfathering" of Section 1.100 from only the City of St. Louis to the City of St. Louis and other counties and political subdivisions. HB 451's application to Section 393.1003.1 arguably changes MAWC's eligibility to apply for an ISRS. Such a law change is substantive in that it ". . . define(s) the rights and duties giving rise to the cause of action by impairing vested rights acquired under existing law, creating new obligations, or imposing new duties."[4] And, substantive changes operate only prospectively because the Missouri Constitution forbids retroactive law changes that impair vested rights.[5] Therefore,

[2] 2017 Mo. Legis. Serv. H.B. 451 (VERNON'S) (West's No. 37).
[3] MAWC's Response to Motion to Dismiss, ¶ 6. See also *id.*; Section 1.130 RSMo; MO. CONST., Art. III, § 29.
[4] *Declue v. DOR*, 945 S.W.2d 684, 686 (Mo.App. 1997).
[5] *Id.*

whether ruling before the effective date of HB 451 or not, the Commission cannot consider HB 451 in ruling upon MAWC's petition.

The Commission notes that it recently ruled on similar arguments about MAWC's eligibility for an ISRS. In File No. WO-2015-0211, in its *Order Denying Rehearing*, the Commission found MAWC was eligible for an ISRS because the county in which it operates had one million inhabitants at the time the ISRS statute was passed. OPC appealed that decision, and the Court of Appeals found in favor of OPC in an unreported opinion.[6] While OPC's appeal was eventually dismissed as moot by the Supreme Court of Missouri,[7] the Commission finds the Court of Appeals' analysis, though not binding, to be instructive and persuasive.[8]

In looking at the history of Section 1.100.2, the statute that HB 451 will have amended on August 28, 2017, the Court noted that in 1971, the General Assembly passed HB 154 to address concerns that the City of St. Louis would fall below the one million population threshold. The Court of Appeals described two versions of Section 1.100.2:

Before 1971:

> Any law which is limited in its operation to counties, cities or other political subdivisions having a specified population or a specified assessed valuation shall be deemed to include all counties, cities or political subdivisions which thereafter acquire

[6] *In re Missouri American Water Company v. OPC*, 2016 WL 873409, *transferred and dismissed on other grounds*, 516 S.W.3d 823 (Mo. banc. 2017).
[7] *Missouri Public Service Commission v. Office of the Public Counsel*, 516 S.W.3d 823 (Mo. 2017).
[8] The Commission has previously noted that, while it is not bound by prior Commission decisions, following prior decisions is good practice since consistency in Commission rulings promotes certainty and predictability. However, if there is good cause to deviate from prior decisions, it is appropriate to do so as long as the Commission clearly and expressly articulates its reasons for the deviation. *See, e.g.*, *In the Matter of Summit Nat. Gas of Missouri Inc.s Filing of Revised Tariffs to Increase Its Annual Revenues for Nat. Gas Serv.*, Report and Order, File No. GR-2014-0086 (Oct. 29, 2014).

> such population or assessed valuation as well as those in that category at the time the law passed.

1971, as amended by HB 154 (additions in bold),

> Any law which is limited in its operation to counties, cities or other political subdivisions having a specified population or a specified assessed valuation shall be deemed to include all counties, cities or political subdivisions which thereafter acquire such population or assessed valuation as well as those in that category at the time the law passed. Once a city not located in a county has come under the operation of such a law a subsequent loss of population shall not remove that city from the operation of that law. No person whose compensation is set by a statutory formula, which is based in part on a population factor, shall have his compensation reduced due solely to an increase in the population factor.

After scrutinizing this history, the Court of Appeals found that "(t)he only reasonable explanation for the (1971) amendment was that the legislature recognized that political subdivisions could fall out of laws and enacted an emergency statute to address the issue for St. Louis City. The legislature had the opportunity to address the issue for all political subdivisions and chose not to do so."[9] The Court of Appeals further stated that "(h)ad the legislature intended the same treatment for all counties it could have easily adopted a broad grandfathering clause. It did not. Instead, after considering a broad grandfathering clause, the Legislature adopted a clause limited and specific to the City of St. Louis."[10]

The statue was amended in 2017 to provide (additions in bold, deletions bracketed):

> Any law which is limited in its operation to counties, cities or other political subdivisions having a specified population or a specified assessed valuation shall be deemed to include all counties, cities or political subdivisions which thereafter acquire such population or assessed valuation as well as those in that category at the time the law passed. Once a city **[**not located in a**]**, county**, or political subdivision** has come under

[9] Supra at fn. 6, p. 8.
[10] *Id.* at 9.

> the operation of such a law a subsequent **[**loss of**]** **change in** population shall not remove that city**, county, or political subdivision** from the operation of that law **regardless of whether the city, county, or political subdivision comes under the operation of the law after the law was passed.** No person whose compensation is set by a statutory formula, which is based in part on a population factor, shall have his compensation reduced due solely to an increase in the population factor.

These new changes will effectively address for counties and political subdivisions the same issue the legislature addressed for St. Louis City in 1971. However, as previously explained, these new changes cannot be applied to MAWC's current petition to establish an ISRS.

As the Court of Appeals found, the Commission finds that the county in which MAWC operates does not have more than one million inhabitants based upon the 2010 census, as required by the currently effective Section 393.1003.1.[11] Therefore, MAWC does not qualify for an ISRS under the express terms of Section 393.1003, and its petition must be dismissed.

THE COMMISSION ORDERS THAT:

1. The Motion to Dismiss filed by the Office of the Public Counsel is granted.
2. This order shall be effective on August 26, 2017.

[11] If MAWC files another ISRS application after HB 451 becomes effective on August 28, the Commission will then have an opportunity to apply that amendment to Section 1.100.2 RSMo to analyze whether the company meets the population standard set forth in the ISRS statutes.

3. This file shall be closed on August 27, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Joint Application for	)	
Extension of the City of Poplar Bluff, Missouri,	)	
And Ozark Border Electric Cooperative for	)	**File No. EO-2017-0358**
Approval of a Territorial Agreement	)	
Involving Three Areas in Butler County, Missouri	)	

REPORT AND ORDER

Electric

§6. Territorial agreements

The Commission found that the amendment to the previously approved territorial agreement, which modified the previous agreement by extending the term for an additional five years was in the public interest.

§11. Territorial agreements

The Commission found that it had jurisdiction to approve the extension of a territorial agreement between an electric cooperative and a municipally owned utility pursuant to subsection 394.312.3, RSMo.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 16th day of August, 2017.

In the Matter of the Joint Application for Extension of the City of Poplar Bluff, Missouri And Ozark Border Electric Cooperative for Approval of a Territorial Agreement Involving Three Areas in Butler County, Missouri	)))))	**File No. EO-2017-0358**

REPORT AND ORDER APPROVING AMENDMENT TO TERRITORIAL AGREEMENT AND APPROVING STIPULATION AND AGREEMENT

Issue Date: August 16, 2017 Effective Date: August 26, 2017

This decision approves the amendment to the territorial agreement between the City of Poplar Bluff, operating through its Municipal Utilities, and Ozark Border Electric Cooperative (collectively, "Applicants"). The amendment extends by five years the previously approved territorial agreement. This order also approves the *Unanimous Stipulation and Agreement* entered into by the parties.

Findings of Fact

On June 30, 2017, the Applicants filed a joint application with the Commission for approval of an extension of their previously approved territorial agreement.[1] The Applicants proposed to amend their existing territorial agreement by extending it for an additional five-year term. The Applicants stated that approval of the amendment to the

[1] *In the Matter of the Joint Application of the City of Poplar Bluff, Missouri, and Ozark Border Electric Cooperative for Approval of a Territorial Agreement Involving Three Areas in Butler County, Missouri*, File No. EO-98-143 (*Report and Order*, issued Dec. 31, 1997).

territorial agreement would not change any of the other terms or conditions of the territorial agreement.

On August 10, 2017, the Applicants along with the Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel filed a *Unanimous Stipulation and Agreement*. The agreement resolved all issues in this matter and waived the parties' rights to a hearing in accordance with Section 394.312.5, RSMo.[2] The agreement further indicates that the proposed territorial agreement extension is not detrimental to the public interest and is, in fact, in the public interest because it establishes certainty regarding the provision of retail service within the designated areas, reducing potential disputes between the Applicants.

No other electric utilities currently serve the specific areas sought to be designated by the Applicants. According to the *Unanimous Stipulation and Agreement,* the proposed extension of the territorial agreement also incorporates the terms of the *Stipulation and Agreement* filed on July 1, 2004, in File No. EC-2003-0452.

Based on the information contained in the verified joint application, previous findings of the Commission approving the terms of the territorial agreement, and the *Unanimous Stipulation and Agreement*, the Commission finds that the proposed amendment by extension of the territorial agreement is in the public interest.

Conclusions of Law

Section 394.312, RSMo, gives the Commission jurisdiction over electric service territorial agreements, including any subsequent amendment to such agreement, between rural electric cooperatives and municipally owned utilities. Under Section

[2] All citations to the Revised Statutes of Missouri 2016 unless otherwise noted.

394.312.3, RSMo, the Commission may approve such amended territorial agreement if the agreement in total is in the public interest. As the Commission found in its findings of fact, the territorial agreement is in the public interest.

Although Section 394.312.5 RSMo, provides that the Commission is to hold an evidentiary hearing to determine whether a territorial agreement is to be approved, no party has requested a hearing. The requirement for a hearing is met when the opportunity for a hearing is provided and no proper party requests the opportunity to present evidence.[3] Notice was given and the parties waived their rights to a hearing. Therefore, no hearing is necessary.

Decision

Based on its findings of fact and conclusions of law, the Commission determines that the submitted amendment to the territorial agreement between the Applicants is in the public interest and shall be approved.

THE COMMISSION ORDERS THAT:

1. The *Unanimous Stipulation and Agreement* filed on August 10, 2017 and attached as Attachment 1 is approved, including the incorporation of the terms of the *Stipulation and Agreement* filed on July 1, 2004, in File No. EC-2003-0452.

2. The amendment of the previously approved territorial agreement between the City of Poplar Bluff, operating through its Municipal Utilities, and Ozark Border Electric Cooperative extending for five years the designation of exclusive service territories in Butler County, Missouri is approved.

[3] *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

3. This order shall become effective on August 26, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Joint Application of 188 North Summit, LLC and Seges Partners Mobile Home Park, LLC for Authority to Acquire the Water System and Wastewater System Assets Of Seges Partners Mobile Home Park, LLC and For a Certificate of Convenience and Necessity to Provide Water and Sewer Services	)	**File No. SM-2018-0017** YS-2018-0039
In the Matter of the Joint Application of 188 North Summit, LLC and Seges Partners Mobile Home Park, LLC for Authority to Acquire the Water System and Wastewater System Assets Of Seges Partners Mobile Home Park, LLC and For a Certificate of Convenience and Necessity to Provide Water and Sewer Services	)	**File No. WM-2018-0018** YW-2018-0040

Order Granting Certificates of Convenience and Necessity and Granting Waiver

Certificates

§45. Water

Granting a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§47. Sewers

Granting a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§52. Transfer, mortgage or lease generally

In a case involving the transfer of water and sewer systems, the granting of a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

Sewer

§2. Certificate of convenience and necessity

Granting a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§4. Transfer, lease and sale

In a case involving the transfer of water and sewer systems, the granting of a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

Water

§2. Certificate of convenience and necessity

Granting a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§4. Transfer, lease and sale

In a case involving the transfer of water and sewer systems, the granting of a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of September, 2017.

In the Matter of the Joint Application of 188 North Summit, LLC and Seges Partners Mobile Home Park, LLC for Authority to Acquire the Water System and Wastewater System Assets Of Seges Partners Mobile Home Park, LLC and For a Certificate of Convenience and Necessity To Provide Water and Sewer Services	)	**File No. SM-2018-0017**
In the Matter of the Joint Application of 188 North Summit, LLC and Seges Partners Mobile Home Park, LLC for Authority to Acquire the Water System and Wastewater System Assets Of Seges Partners Mobile Home Park, LLC and For a Certificate of Convenience and Necessity To Provide Water and Sewer Services	)	**File No. WM-2018-0018**

ORDER GRANTING CERTIFICATES OF CONVENIENCE AND NECESSITY AND GRANTING WAIVER

Issue Date: September 19, 2017 Effective Date: September 29, 2017

On July 18, 2017, 188 North Summit, LLC ("188NS") and Seges Partners Mobile Home Park, LLC ("Seges") (collectively, "Applicants") filed a joint application[1] with the Missouri Public Service Commission ("Commission") seeking authority for 188NS to purchase substantially all of the water and sewer assets of Seges. Applicants also request certificates of convenience and necessity ("CCN") for 188NS and waivers from certain Commission administrative rules.

[1] The application was filed pursuant to Sections 393.170 and 393.190, RSMo 2016, and Commission Rules 4 CSR 240-3.305, 4 CSR 240-3.310, 4 CSR 240-3.600, 4 CSR 240-3.605, and 4 CSR 240-4.020(2)(B).

The requested CCNs would allow 188NS to provide water and sewer service to a mobile home park with approximately 55 customers that 188NS recently purchased from Seges. With approval of the proposed transfer of assets, 188NS proposes to adopt Seges' existing water and sewer tariffs, including the current rates for water and sewer service.

The Commission issued notice and set a deadline for intervention requests, but no persons requested to intervene in this proceeding. On August 25, 2017, the Commission's Staff filed its Recommendation and Memorandum to approve the transfer of assets and the granting of the CCNs, subject to certain conditions. Staff advises the Commission to issue an order to:

1. Approve the transfer of assets from Seges to 188NS, as requested;

2. Require Seges or 188NS to notify the Commission of closing on the assets within five (5) days after such closing;

3. Issue 188NS a CCN to provide water and sewer service in Seges existing service area, to become effective upon closing of the assets;

4. Authorize 188NS to provide service under the water and sewer tariffs presently in effect and on file for Seges, on an interim basis, until Adoption Notice tariff sheets become effective;

5. Require 188NS to adopt the Seges tariffs by filing Adoption Notice tariff sheets, one each for the water tariff and the sewer tariff, with 30-day effective dates, within ten (10) days after closing on the assets;

6. Prescribe depreciation accrual rates for water and sewer utility plant for 188NS that are identical to those currently prescribed for Seges;

7. Authorize Seges to cease providing water and sewer service immediately after closing with 188NS on the assets;

8. After receiving notice of closing, cancel the CCN authorizing Seges to provide water and sewer service; and,

9. If Seges and/or 188NS determine that the transfer of the water and sewer assets will not occur, require either or both parties to notify the Commission of such.

10. Require 188NS to ensure compliance to Commission Rule 4 CSR 240-13, its tariffs, its recordkeeping in accordance with the NARUC Uniform System of Accounts, and other pertinent regulations of the Commission and DNR, and keep current with its annual reports and payment of annual assessments;

11. Require 188NS to provide to the CMAU staff within thirty (30) days of its first billing issued to its customers a sample of ten (10) billing statements;

12. Require 188NS to work with Staff on the development and distribution of notice to the customers regarding the transfer of utility assets and the contact information of the new water and sewer utility;

13. Require 188NS to update and distribute to all customers an informational brochure detailing the rights and responsibilities of the utility and its customers, consistent with the requirements of Commission Rule 4 CSR 240-13.

On August 29, 2017, Applicants filed a response stating that they have no objection to the conditions in the Staff Recommendation. No other party has objected to the Staff recommendation within the time set by the Commission. Thus, the Commission will rule upon the unopposed application. No party has requested an evidentiary hearing, and no law requires one.[2] Therefore, this action is not a contested case,[3] and the Commission need not separately state its findings of fact.

The Commission may grant a 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."[4] 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

[2] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App. 1989).
[3] Section 536.010(4), RSMo 2016.
[4] Section 393.170.3, RSMo 2016.

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.[5] The Commission finds that 188NS possesses adequate technical, managerial, and financial capacity to operate the water and sewer systems it wishes to purchase from Seges. The Commission concludes that the factors for granting certificates of convenience and necessity to 188NS have been satisfied and that it is in the public interest for 188NS to provide water and sewer service to the customers currently being served by Seges. Consequently, based on the Commission's independent and impartial review of the verified filings, the Commission will authorize the transfer of assets and grant 188NS the certificates of convenience and necessity to provide water and sewer service within the proposed service area, subject to the conditions described above. Upon notification by Applicants of the closing of the purchase transaction, the Commission will cancel the CCNs authorizing Seges to provide water and sewer service. In order to facilitate the timely transfer of assets, the Commission will make this order effective in ten days.

The application also asked the Commission to waive the 60-day notice requirement under 4 CSR 240-4.020(2), if necessary.[6] Applicants explain that such waiver may not be necessary since matters of this type rarely become contested cases. However, Applicants assert that good cause exists in this case for granting such waiver because due to the nature of this particular transaction it would serve no purpose to wait sixty days before filing

[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), 1994 WL 762882, *3 (Mo. P.S.C.).

[6] The 60-day notice requirement referred to in 4 CSR 240-4.020(2) was replaced with a new rule 4 CSR 240-4.017(1) effective on July 30, 2017. However, since the application was filed prior to that effective date the old rule still applies to this matter.

the application. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.020(2) will be granted.

Applicants also request waiver of four rules relating to filing requirements for water and sewer applicants: 4 CSR 240-3.305(1)(A)(2) and 4 CSR 240-3.600(1)(A)(2) (name and address of ten residents) and 4 CSR 240-3.305(1)(A)(5) and 4 CSR 240-3.600(1)(A)(5) (feasibility study). The Commission finds that good cause exists for waiver of those filing requirements because no new service area is being requested, and 188NS will instead be assuming the duties of providing service in an existing regulated service area. The requested waivers will be granted.

THE COMMISSION ORDERS THAT:

1. Applicants' request for waiver of the notice requirement under Commission Rule 4 CSR 240-4.020(2) is granted.

2. Applicants' request for waiver of Commission rules 4 CSR 240-3.305(1)(A)(2), 4 CSR 240-3.305(1)(A)(5), 4 CSR 240-3.600(1)(A)(2) and 4 CSR 240-3.600(1)(A)(5) is granted.

3. 188 North Summit, LLC is authorized to acquire the assets of Seges Partners Mobile Home Park, LLC identified in the application.

4. 188 North Summit, LLC is granted the certificates of convenience and necessity to provide water and sewer service within the authorized service area as more particularly described in the application, subject to the conditions and requirements contained in Staff's Recommendation, including those conditions described in the body of this order, effective upon the date of closing of the purchase transaction.

5. 188 North Summit, LLC is authorized to adopt the water and sewer tariffs of Seges Partners Mobile Home Park, LLC.

6. Applicants are authorized to take such other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

7. This order shall become effective on September 29, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Bushmann, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

ORDER APPROVING STIPULATION AND AGREEMENT, GRANTING CCN AND TRANSFER OF ASSETS

Certificates

§21. Grant or refusal of certificate generally

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." 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. Citing Section 393.170.3, RSMo 2000; and *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

§52. Transfer, mortgage or lease generally

Section 393.190.1, RSMo 2016, requires water and sewer corporations obtain the Commission's approval before mortgaging or otherwise encumbering the whole or part of a franchise, works, or systems. The Commission determines that it is not detrimental to the public interest for Elm Hills to borrow up to $1,250,000 in secured indebtedness, for the purposes specified by Elm Hills. Elm Hills and MO Utilities indicate in the *Application* that the proposed financing transactions will have no material impact on the tax revenues of the political subdivisions in which any of the structures, facilities or equipment of the companies involved are located.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of September, 2017.

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

ORDER APPROVING STIPULATION AND AGREEMENT, GRANTING CCN AND TRANSFER OF ASSETS

Issue Date: September 19, 2017 Effective Date: September 29, 2017

On November 22, 2016, Elm Hills Utility Operating Company, Inc. ("Elm Hills or "the Company") and Missouri Utilities Company ("MO Utilities") filed an *Application* requesting the Commission authorize MO Utilities to sell and transfer its water and sewer utility assets, including its certificate of convenience and necessity ("CCN") to provide water and sewer services, to Elm Hills. Elm Hills also requested a CCN authorizing it to provide sewer service in the State Park Village subdivision development located in Johnson County, Missouri. In addition, Elm Hills sought approval from the Commission to issue up to $1,450,000 of secured indebtedness.

The Commission issued notice of the *Application* and set a deadline for the filing of applications to intervene, but no applications were received. The Commission conducted two local public hearings on May 9, 2017. On June 8, 2017, the Commission's Staff filed a recommendation to approve the *Application* subject to certain conditions. On June 28, 2017, the Office of the Public Counsel ("OPC") filed a response

to Staff's recommendation and requested an evidentiary hearing. A joint proposed procedural schedule was submitted, but prior to the Commission issuing an order on the proposal, Elm Hills, Staff and OPC filed a *Notice of Settlement and Joint Withdrawal of the Procedural Schedule*.

Elm Hills and Staff submitted a *Nonunanimous Stipulation and Agreement* ("Stipulation") on August 2, 2017. OPC filed a *Position Statement to Non-Unanimous Stipulation* stating that for the current case, it does not object to the Stipulation. No other responses were filed. Although a hearing was previously requested, that request was withdrawn and the unopposed Stipulation submitted for the Commission's approval. The requirement for a hearing is met when the opportunity for a hearing has been provided.[1] Therefore, the Commission will evaluate the unopposed Stipulation.

MO Utilities is a water and sewer corporation,[2] subject to the Commission's jurisdiction. As a regulated utility, MO Utilities must obtain the Commission's authorization before selling or transferring its assets.[3] MO Utilities currently provides water service in Pettis County near Sedalia, Missouri, to approximately 120 customers and sewer service to approximately 115 customers. Originally granted a CCN to provide water and sewer service in Case. No. WA-92-291, MO Utilities has been in receivership since August 14, 2006.[4] MO Utilities has received notice from the Missouri Department of Natural Resources ("DNR") for exceeding permitted discharge limits, failure to maintain facilities, and failure to submit required reports. As Staff notes in Appendix A of its June 8, 2017 Recommendation, the current system is unable to meet

[1] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).
[2] Section 386.020(49),(59), RSMo 2016.
[3] Section 393.190, RSMo 2016.
[4] Cole County Circuit Court Case No. 06ACCC00337.

anticipated new discharge limits for Escherichia coliform (E. Coli) bacteria and ammonia.

Under the terms of the Stipulation, the signatories agree that for Mo Utilities' water customers, the existing customer charges will remain the same, but no longer include a preset amount of water. The commodity charge will be adjusted to $2.47 per thousand gallons for metered customers. For Mo Utilities' sewer customers, a flat rate of $19.21 per month will be set for both residential and commercial customers, to reflect the cost of service as incurred at present by MO Utilities.

The approximately 180 sewer customers in State Park Village, located near Warrensburg, Missouri, currently receive service through a system owned and operated by State Park Village Sewer, Inc., a nonprofit sewer company controlled by the homeowners and not regulated by the Commission. In the *Application*, Elm Hills indicates that it plans to purchase the sewer system from State Park Village Sewer, Inc., which was administratively dissolved as of January 3, 2017. The State Park Village wastewater system is currently under a DNR schedule of compliance and has DNR violations pending against it.[5] Under the terms of the Stipulation, a flat rate of $45 per month will be applied by Elm Hills to State Park Village customers.

The signatories to the Stipulation request the Commission order Elm Hills to utilize the depreciation rates as detailed in Attachment A. The signatories also agree that the Commission should authorize Elm Hills to enter into loan agreements as described in the *Application*, except that the aggregate principal amount of all such debt obligations shall not exceed $1,250,000 and limits be placed on any pre-payment penalty. Under the terms of the Stipulation, Elm Hills will be allowed to create a first lien

[5] See pg. 2-3 of Appendix A of Staff's June 8, 2017 Recommendation.

on all of the franchises, plant and system of Elm Hills, to secure its obligations under the described loan.

The Stipulation also sets the present rate base as $0.00 for State Park Village Sewer, Inc. and MO Utilities, with Elm Hills being authorized to establish a regulatory asset on its balance sheets for approximately $50,000 for deferred receivership costs for MO Utilities.[6]

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."[7] 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.[8]

The Commission finds that Elm Hills possesses adequate technical, managerial, and financial capacity to operate the water system it wishes to purchase from MO Utilities and State Park Village Sewer, Inc. The Commission concludes that the factors

[6] See ¶ 30 of Appendix A to *Nonunanimous Stipulation and Agreement*.
[7] Section 393.170.3, RSMo 2000.
[8] The factors have also been referred to as the "Tartan Factors" or the "Tartan Energy Criteria." See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

for granting a certificate of convenience and necessity to Elm Hills have been satisfied and that it is in the public interest for Elm Hills to provide water and sewer service to the customers currently being served by MO Utilities and State Park Village Sewer, Inc. Consequently, based on the Commission's independent and impartial review of the filings, the Commission will authorize the transfer of assets and grant Elm Hills the certificates of convenience and necessity to provide water and sewer service within the proposed service areas, subject to the conditions described above.

Section 393.190.1, RSMo 2016, requires water and sewer corporations obtain the Commission's approval before mortgaging or otherwise encumbering the whole or part of a franchise, works, or systems. The Commission determines that it is not detrimental to the public interest for Elm Hills to borrow up to $1,250,000 in secured indebtedness, for the purposes specified by Elm Hills. Elm Hills and MO Utilities indicate in the *Application* that the proposed financing transactions will have no material impact on the tax revenues of the political subdivisions in which any of the structures, facilities or equipment of the companies involved are located.

Finding the unopposed Stipulation to be a reasonable resolution of all outstanding issues, the Commission will approve the Stipulation and direct all signatories to comply with its terms. Since no party opposes the Stipulation and further action must be taken to complete the financing and transfer of assets, the Commission finds good cause exists to allow this order to become effective in less than thirty days.

THE COMMISSION ORDERS THAT:

1. Missouri Utilities Company is authorized to transfer to Elm Hills Utility Operating Company the assets identified in the *Application*.

2. Elm Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity to install, acquire, build construct, own, operate, control, manage and maintain a sewer system in Johnson County, Missouri, in the area currently served by State Park Village Sewer, Inc., as described in Appendix K of Staff's June 8, 2017 Recommendation.

3. Elm Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity to install, acquire, build construct, own, operate, control, manage and maintain a sewer system in Pettis County, Missouri, in the area currently served by Missouri Utilities Company.

4. Elm Hills Utility Operating Company, Inc. is granted a Certificate of Convenience and Necessity to install, acquire, build construct, own, operate, control, manage and maintain a water system in Pettis County, Missouri, in the area currently served by Missouri Utilities Company.

5. The *Nonunanimous Stipulation and Agreement* is approved. The signatories are ordered to comply with the terms of the agreement, which is incorporated herein as if fully set forth herein. The agreement is attached to this order as Attachment 1, excepting Appendix B[9]. The conditions detailed in Appendix A to the *Nonunanimous Stipulation Agreement* are hereby adopted, and the signatories shall comply with the conditions.

6. Elm Hills Utility Operating Company, Inc. is authorized to enter into, execute and deliver loan agreements with the aggregate principal amount of all such debt obligations not to exceed One Million Two Hundred and Fifty Dollars ($1,250,000)

[9] Appendix B of the *NonUnanimous Stipulation and Agreement* was designated by the signatories as confidential, in accordance with Commission Rule 4 CSR 240-2.135(2)(A)6 – "Strategies employed, to be employed, or under consideration in contract negotiations."

and to create and make effective a first lien on the franchises, plant and system of Elm Hills, to secure its loan obligations. Any pre-payment penalty included in the loan agreements shall be no more than one-half of the interest owed to the lender and shall be in place for no longer than one-half of the term of the loan authorized in this ordered paragraph, and as detailed in Appendix B of the *Nonunanimous Stipulation and Agreement*.

7. Elm Hills is authorized to take such other actions as may be deemed necessary and appropriate to complete the transactions described in the *Nonunanimous Stipulation and Agreement*.

8. Nothing in this order shall be considered a finding by the Commission of the value of a transaction for ratemaking purposes, which includes, but is not limited to the capital structure.

9. The Commission's Data Center shall mail a copy of this order to the county clerks for Johnson and Pettis Counties, Missouri.

10. That order shall become effective on September 29, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Burton, Senior Regulatory Law Judge.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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 a Sewer System in an area of St. Louis County, Missouri (Homestead Estates)	)))))))	**File No. SA-2018-0019**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

<u>Water</u>

§2. Certificate of convenience and necessity

The Commission granted Missouri-American Water Company a certificate of convenience and necessity to provide sewer service to the Homestead Estates subdivision.

<u>Certificates</u>

§34. Public convenience and necessity or public benefit

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."

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 27th day of September, 2017.

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 a Sewer System in an area of St. Louis County, Missouri (Homestead Estates).	))))))	**File No. SA-2018-0019**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: September 27, 2017 Effective Date: October 27, 2017

Missouri-American Water Company ("MAWC") filed an application on July 19, 2017, with the Missouri Public Service Commission ("Commission") requesting a Certificate of Convenience and Necessity ("CCN") to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in the Homestead Estates subdivision in St. Louis County, Missouri. 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.

The CCN would allow MAWC to acquire sewer utility assets of the Homestead Estates Association ("Association"), a homeowner's association not currently subject to the Commission's jurisdiction. MAWC would provide Homestead Estates subdivision sewer service for 39 current residential customers, with potential for approximately 60 total residential customers. MAWC already provides water service to Homestead Estates subdivision.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On September 5, 2017, the Commission's Staff filed its recommendation to approve the transfer of assets and grant a CCN, with 15 conditions. MAWC wants to charge for sewer service under existing rates, rules, and regulations applicable to its Cedar Hill service area in MO PSC No. 26.

On September 12, 2017, MAWC filed its response to Staff's recommendations. MAWC has no objection to Staff's recommendations. Additionally, MAWC would not seek to recover any acquisition premium associated with this acquisition.

No party has objected to MAWC's application or Staff's recommendation. Thus, the Commission will rule upon the application. No party has requested an evidentiary hearing, and no law requires one.[1] Therefore, this action is not a contested case.[2]

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

[1] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).
[2] Section 536.010(4), RSMo.
[3] Section 393.170.3, RSMo.

service must promote the public interest.[4]

There is a need for the service as 39 residents of Homestead Estates currently make use of the existing 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 as no external financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is not unrealistic given their prior experience and past performance. The proposal promotes the public interest as demonstrated by the Association's members voting unanimously 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 sewer service to the customers currently served by the Association. Further, the Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the sewer system it wishes to purchase from the Association. Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to provide sewer service within the proposed service area, subject to the 15 conditions described by Staff and MAWC's statement that it will not seek to recover any acquisition premium.

[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).

MAWC's application also asks the Commission to waive the 60-day notice requirement in 4 CSR 240-4.020(2). As of July 30, 2017, the 60-day notice requirement has moved to 4 CSR 240-4.017(1), but a waiver for good cause provision still exists.[5] MAWC asserts there is good cause for granting such waiver; it did not engage in conduct that would constitute a violation of the Commission's ex parte rule, and no asset purchase agreement existed within 60 days prior to filing its application. The Commission finds good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company is granted a certificate of convenience and necessity to provide sewer service to the Homestead Estates subdivision described in the revised map and legal description MAWC provided to Staff[6], subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:

   a. Missouri-American Water Company shall apply the existing sewer rates and service charges that currently apply to its Cedar Hill service area, except Connection Charges and Capacity Charges included on the Schedule of Service Charges applicable to MAWC's Cedar Hill service area shall not apply to the Homestead Estates service area;

   b. Missouri-American Water Company shall submit new tariff sheets, to become effective before closing on the assets, including a service area map, service area metes and bounds description, and either new tariff sheets or revised tariff sheets with notations showing approved rates and service charges, to be included in its sewer tariff PSC MO No. 26;

[5] 4 CSR 240-4.017(1) (D) states what good cause for waiver may include.
[6] *Staff Recommendations* File No. SA-2018-0019 Attachments A and B (Filed on September 5, 2017).

c. Missouri-American Water Company's existing approved depreciation rates for sewer assets shall apply to the Homestead Estates service area assets;

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

e. If Missouri-American Water Company determines that a transfer of the assets will not occur, it shall notify the Commission no later than the date of the next status report, as addressed above, after such determination is made. In addition, Missouri-American Water Company shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Homestead Estates service area in its sewer tariffs;

f. Missouri-American Water Company shall keep its financial books and records for Homestead Estates plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

g. Missouri-American Water Company shall provide an example of its actual communication with the Homestead Estates service area customers regarding its acquisition and operations of the Homestead Estates sewer system assets, and how customers may reach Missouri-American Water Company, within ten days after closing on the assets;

h. Missouri-American Water Company shall obtain from Homestead Estates, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, depreciation reserve balances, documentation of contributions-in-aid-of-construction (CIAC) transactions, and any capital recovery transactions;

i. Missouri-American Water Company shall provide in its next general rate case an analysis documenting its proposed rate base values for Homestead Estate's sewer system assets, including an appropriate offset for associated CIAC;

j. The Commission specifically makes no finding that would preclude it from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the certificate of convenience and necessity to Missouri-American Water Company, including expenditures related to the Homestead Estates certificated service area, in any later proceeding;

k. Missouri-American Water Company shall ensure adherence to Commission Rules at 4 CSR 240-13 with respect to Homestead Estates customers;

l. Missouri-American Water Company shall include the Homestead Estates customers in its established monthly reporting to the Staff Consumer & Management Analysis Unit (CMAU) on customer service and billing issues;

m. Missouri-American Water Company shall distribute to the Homestead Estates 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 Rules at 4 CSR 240-13.-4- (2) (A-L), within ten days of closing on the assets;

n. Missouri-American Water Company shall provide adequate training for the correct application of rates and rules, including sewer charges, to all customer service representatives prior to Homestead Estates customers receiving their first bill from Missouri-American Water Company that include sewer charges; and,

o. Missouri-American Water Company shall provide to the CMAU staff a sample of ten billing statements from the first month's billing within 30 days of such billing.

2. Missouri-American Water Company is authorized to acquire Homestead Estates Association's assets identified in the application.

3. Missouri-American Water Company is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the applications.

4. This order shall become effective on October 27, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Jerreld Fisher,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2017-0281**
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
	)	
Respondent.	)	

REPORT AND ORDER

Discrimination

§11. Inequality of rates

The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

Electric

§2. Obligation of the utility

The Commission determined that a utility does not have an obligation to continue service in lieu of payment when proper notices of disconnection are made. The Commission also determined that a utility does not have an obligation to re-connect service when an outstanding past-due amount is owed, nor when the homeowner refuses a city ordinance required wiring inspection.

§19. Discrimination

The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, diabled person, or impoverishment.

§41. Billing practices

The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

Rates

§7. Obligation of the utility

The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

Service

§3. Obligation of the utility

The Commission determined that a utility does not have an obligation to continue service in lieu of payment when proper notices of disconnection are made. The Commission also determined that a utility does not have an obligation to re-connect service when an outstanding past-due amount is owed, nor when the homeowner refuses a city ordinance required wiring inspection.

§8. Discrimination

The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

§17. Duty to serve in general

The Commission determined that a utility does not have an obligation to continue service in lieu of payment when proper notices of disconnection are made. The Commission also determined that a utility does not have an obligation to re-connect service when an outstanding past-due amount is owed, nor when the homeowner refuses a city ordinance required wiring inspection.

§23. Reasons for failure or refusal to serve

The Commission determined that a utility does not have an obligation to continue service in lieu of payment when proper notices of disconnection are made. The Commission also determined that a utility does not have an obligation to re-connect service when an outstanding past-due amount is owed, nor when the homeowner refuses a city ordinance required wiring inspection.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Jerreld Fisher,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2017-0281**
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
	)	
Respondent.	)	

REPORT AND ORDER

Issue Date: November 16, 2017

Effective Date: December 16, 2017

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Jerreld Fisher,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. EC-2017-0281**
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
	)	
Respondent.	)	

APPEARANCES

Jerreld Fisher, 301 South Grand Blvd., St. Louis, Missouri 63103, on behalf of himself as a pro se complainant.

Appearing for **UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI**:

Sarah Giboney, Smith Lewis, LLP, 111 S. Ninth Street, P.O. Box 918, Columbia, Missouri 65205-0918.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**:

Nicole Mers, Legal Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On April 26, 2017, Jerreld Fisher filed a complaint with the Missouri Public Service Commission ("Commission") against Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"). Mr. Fisher alleged primarily that Ameren Missouri has issued him incorrect bills and improperly disconnected and denied service as a result of the balance due on his account.[1]

Ameren Missouri filed an amended answer to the complaint, denying Mr. Fisher's allegations and moving to dismiss the complaint. That motion was denied at the hearing. The Commission's Staff investigated and filed a report finding that Ameren Missouri committed no violations of any statute, regulation or Commission-approved tariff. Because there were material facts in dispute, the Commission held an evidentiary hearing on October 12, 2017, in Jefferson City, Missouri, to address Mr. Fisher's allegations.[2]

II. Findings of Fact

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

[1] The information provided by Mr. Fisher also appeared to allege violations of the Constitution and federal law, but since the Commission is not authorized to adjudicate such matters those allegations will not be discussed further.

[2] Transcript, Volume 2 (hereinafter, "Tr."). In total, the Commission admitted the testimony of 3 witnesses and received 23 exhibits into evidence. A post-hearing brief was filed on October 31, 2017, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record. "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

1. Jerreld Fisher currently resides at 301 S. Grand Blvd., St. Louis, Missouri and was, at all times relevant hereto, a customer of Ameren Missouri for electric service.[3]

2. Ameren Missouri is a Missouri corporation with its principal place of business at One Ameren Plaza, 1901 Chouteau, St. Louis, Missouri 63103. Ameren Missouri is engaged in the business of providing electric service in Missouri to customers in its service areas.

3. Ameren Missouri is an "electrical corporation" and a "public utility" as those terms are defined in Section 386.020, RSMo 2016, and is subject to the jurisdiction and supervision of the Commission as provided by law.

4. The Office of the Public Counsel ("Public Counsel") "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission."[4] Public Counsel "shall have discretion to represent or refrain from representing the public in any proceeding."[5] The Public Counsel did not participate in the evidentiary hearing in this matter.

5. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[6] Staff participated as a party in this matter.

6. At the evidentiary hearing, Ameren Missouri presented the testimony of Cathy Hart, who testified credibly regarding Ameren Missouri's billing practices, recordkeeping,

[3] Tr., p. 23.
[4] Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).
[5] Section 386.710(3), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).
[6] Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

and customer service protocols and Ameren Missouri's documents and records pertaining to Mr. Fisher's accounts for electric service.[7]

7. Ameren Missouri provided electric service to Mr. Fisher at 5103 Page Blvd., St. Louis, Missouri ("Page") at his request and in his name from May 14, 2010 until May 2, 2011.[8]

8. During the period that Ameren Missouri provided electric service to Mr. Fisher at Page, he did not make payments in full of the amounts billed for service, and his account fell into arrears. Mr. Fisher's outstanding account balance for service at Page in his final bill was $2,344.11, which amount was transferred to Mr. Fisher's account for service at 3712 N. Euclid Unit 1, St. Louis, Missouri, ("Euclid") on June 22, 2011.[9]

9. Ameren Missouri provided electric service to Mr. Fisher at Euclid at his request and in his name from October 12, 2010 until June 30, 2011.[10]

10. It is common for customers to have two active accounts for residential service at one time, and there is no Ameren Missouri tariff that prohibits a customer from having more than one residential account at a time.[11]

11. An energy assistance agency made pledges to Mr. Fisher's Euclid account during the period that service for the Euclid account was in his name.[12] Entities making energy assistance pledges will not make a pledge to a person at a location unless that location is the person's home.[13]

12. Almost all charges for service rendered at Euclid were paid by an energy assistance agency while that account was active. The remaining unpaid amount after those

[7] Tr., p. 35-111.
[8] Tr., p. 56-57, 61-62; Ex. 200; Ex. 203; Ex. 209C.
[9] Tr., p. 65-67; Ex. 200.
[10] Tr., p. 69-71; Ex. 201; Ex. 216; Ex. 218.
[11] Tr., p. 62-63.
[12] Tr., p. 72-74; Ex. 217.
[13] Tr., p. 67-68, 72-73.

payments were applied toward the charges for service at Euclid was the account balance that had previously been transferred from Page, less $0.46.[14] That remaining balance from Euclid in the amount of $2,343.65 was transferred to Mr. Fisher's account for service at 2519 St. Louis Ave., St. Louis, Missouri ("St. Louis Ave.") on September 28, 2012.[15]

13. Prior to September 28, 2012, the St. Louis Ave. account was in the name of Mr. Fisher's wife. When Ameren Missouri was notified that Mrs. Fisher had died, Ameren Missouri terminated Mrs. Fisher's account and sent an "unknown user" card to that address.[16] Mr. Fisher called Ameren Missouri in response to that card on September 27, 2012, and his St. Louis Ave. account was opened the following day.[17]

14. On September 28, 2012, Mr. Fisher's account for St. Louis Ave. was charged for the electric service provided at that address between June 11, 2012 and September 27, 2012, which was the period of time after Mrs. Fisher's account was terminated.[18]

15. Mrs. Fisher's outstanding balance was very small, and Ameren Missouri did not transfer Mrs. Fisher's account balance into Mr. Fisher's account for St. Louis Ave.[19]

16. Ameren Missouri provided electric service to Mr. Fisher at St. Louis Ave. from June 11, 2012 through April 10, 2014.[20]

17. Mr. Fisher did not personally make any payments on the St. Louis Ave. account while it was active, although some payments were made by energy assistance agencies.[21]

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[14] Tr., p. 72, 110-111; Ex. 201.
[15] Tr., p. 71-72; Ex. 201; Ex. 202.
[16] Tr., p. 77-78.
[17] Ex. 205, p. 28.
[18] Tr., p. 77-78.
[19] Tr., p. 76-77.
[20] Tr., p. 76; Ex. 202.
[21] Tr., p. 81-82; Ex. 202.

18. Mr. Fisher did not make payment in full of bills for service at St. Louis Ave., which resulted in his account becoming delinquent. As of March 24, 2014, his outstanding account balance was more than $3,200.[22]

19. Ameren Missouri sent Mr. Fisher disconnection notices on March 25, 2014 and April 3, 2014.[23]

20. Ameren Missouri disconnected Mr. Fisher's service at St. Louis Ave. on April 10, 2014 for nonpayment of his outstanding bills.[24]

21. Mr. Fisher did not make any payments on his St. Louis Ave. account between the time the disconnection notices were issued and disconnection of service.[25] Mr. Fisher did not dispute the charges on the St. Louis Ave. account by notifying Ameren Missouri of a dispute prior to the time of the disconnection.[26]

22. The final bill issued to Mr. Fisher was in the amount of $4,870.05.[27] Mr. Fisher made two payments of $50 each on the St. Louis Ave. account after the date that service was disconnected, which reduced his total outstanding account balance to $4,770.05.[28]

23. On November 21, 2014, Mr. Fisher contacted Ameren Missouri by telephone and requested that his electric service at St. Louis Ave. be restored.[29] On that date, Ameren Missouri representatives informed Mr. Fisher of the balance due of $4,770.05 on that account and that to restore service he would need to make a down payment of $949 with

[22] Ex. 202, p. 3.
[23] Ex. 205, p. 6-7.
[24] Tr., p. 78; Ex. 205, p. 6.
[25] Ex. 202, p. 3.
[26] Tr., p. 80-81.
[27] Ex. 202, p. 3.
[28] Tr., p. 82; Ex. 202, p. 3.
[29] Tr., p. 82-83; Ex. 205, p. 5.

the remaining balance paid in equal monthly payments of $159 over 24 months, rather than the typical 12 month payment period.[30]

24. On January 22, 2015, an energy assistance agency made two initial pledges for payment in the amounts of $233 and $716 on Mr. Fisher's payment agreement for St. Louis Ave.[31] Those payments were returned in March 2015 because electric service was never restored.[32]

25. On January 22, 2015, Ameren Missouri established a new account number for Mr. Fisher at St. Louis Ave. and issued an order to connect electric service, contingent on Mr. Fisher obtaining an electrical wiring inspection for that house from the City of St. Louis.[33]

26. In the City of St. Louis, where St. Louis Ave. is located, a city ordinance makes it unlawful for Ameren Missouri to supply electricity to any structure or premise that has not been in use for more than six months without inspection of the wiring of that structure.[34] Ameren Missouri does not have the authority to waive that inspection.[35] The intent of the ordinance is to "insure public health, safety and welfare insofar as they are affected by the installation and maintenance of electrical systems".[36]

27. After electric service to St. Louis Ave. was disconnected, vandals cut the electrical wiring and removed plumbing, making the house uninhabitable.[37] As of the date of the hearing, Mr. Fisher had not repaired the wiring in the house and had not obtained the

[30] Tr., p. 83-84; Ex. 205, p. 4.
[31] Tr., p. 84-86; Ex. 206, p. 6.
[32] Ex. 206, p. 4-5.
[33] Tr., p. 85-86; Ex. 205, p. 3; Ex. 208.
[34] Tr., p. 86-88; Ex. 207, p. 25-2.99.
[35] Tr., p. 88.
[36] Ex. 207, p. 25-2.89.
[37] Tr., p. 29.

required wiring inspection by the City of St. Louis.[38] Mr. Fisher is a certified, licensed, and bonded electrician.[39]

28. One of Ameren Missouri's tariffs requires it to provide electric service to customers only after all approvals are obtained from governmental and regulatory authorities having jurisdiction.[40]

29. On June 23, 2017, Ameren Missouri mailed Mr. Fisher a letter explaining what he needed to do in order to have his electric service re-connected at St. Louis Ave.[41]

III. Conclusions of Law

Although Mr. Fisher is not a person or an entity regulated by the Commission, he submitted himself to the Commission's jurisdiction when he filed his complaint pursuant to Section 386.390, RSMo 2016. Ameren Missouri provides electric service to customers throughout the service area certificated to it by the Commission. Ameren Missouri is an "electrical corporation" and "public utility" as those terms are defined by Section 386.020, RSMo 2016, and is subject to the Commission's jurisdiction, supervision, control and regulation as provided in Chapters 386 and 393, RSMo 2016.

Since Mr. Fisher brought the complaint, he bears the burden of proof.[42] The burden of proof is the preponderance of the evidence standard.[43] In order to meet this standard, Mr. Fisher must convince the Commission it is "more likely than not" that Ameren Missouri

[38] Tr., p. 29-30, 92.
[39] Tr., p. 29.
[40] Ex. 220.
[41] Ex. 100, Schedule 2.
[42] *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003).
[43] *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).

violated an applicable statute, rule, or provision of a Commission-approved tariff.[44] The issue for determination is whether Ameren Missouri violated any state law, Commission rule, or company tariff relating to billing, disconnection of service, or re-connection of Mr. Fisher's electric service.

Billing

There is competent, substantial, and credible evidence in the record that Mr. Fisher's bills for service provided at Page, Euclid, and St. Louis Ave. are correct. Mr. Fisher denies that he requested service for or lived at Euclid and alleges that the Page and Euclid bill accounts were questionable because they were both in his name during overlapping periods of time. However, the evidence showed that it is permissible for a customer to have more than one residential service account at a time. Mr. Fisher also received energy assistance pledges while the Euclid account was in his name from agencies that will not make a pledge to a person at a location unless that location is the person's home. Ameren Missouri's records indicate that Mr. Fisher requested and received service at Page, Euclid, and St. Louis Ave. In addition, Mr. Fisher did not dispute the amount of any bills until after his service at St. Louis Ave. had been disconnected. The evidence showed that Mr. Fisher's outstanding account balances were transferred from Page to Euclid to St. Louis Ave., but that practice is specifically permitted under Commission rules.[45] Based on all this evidence, the Commission concludes that bills issued to Mr. Fisher for service at Page, Euclid, and St. Louis Ave are correct, and Mr. Fisher's outstanding account balance currently due is $4,770.05.

[44] *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).
[45] Commission Rule 4 CSR 240-13.050(2)(B).

Disconnection of service

Mr. Fisher claims that the disconnection of his electric service at St. Louis Ave. was improper. A utility may discontinue service to a customer for nonpayment of an undisputed delinquent charge.[46] To create a dispute, a customer must notify a utility of any dispute regarding a charge at least 24 hours prior to the date that utility service is proposed to be discontinued.[47] A utility must provide the customer with appropriate notices of the disconnection of service at least 10 days and 24 hours prior to the date of the proposed disconnection.[48]

Mr. Fisher did not present any evidence that the disconnection of electric service at St. Louis Ave. by Ameren Missouri was improper. The evidence showed that (1) Ameren Missouri disconnected Mr. Fisher's service due to nonpayment of delinquent charges; (2) Mr. Fisher did not dispute the charges on the St. Louis Ave. account prior to the time of the disconnection because Mr. Fisher did not notify Ameren Missouri of any dispute at least 24 hours prior to the date that service was proposed to be discontinued; (3) Ameren Missouri provided Mr. Fisher with proper notices of the disconnection at least 10 days and 24 hours prior to the date of disconnection; and (4) Mr. Fisher did not make any payments on his St. Louis Ave. account between the time the disconnection notices were issued and disconnection of service. The Commission concludes that Ameren Missouri did not violate any state statute, Commission rule, or company tariff when disconnecting Mr. Fisher's service at St. Louis Ave.

[46] Commission Rule 4 CSR 240-13.050(1)(A).
[47] Commission Rule 4 CSR 240-13.045(1).
[48] Commission Rule 4 CSR 240-13.050(5) and (8).

Re-connection of service

Mr. Fisher claims that Ameren Missouri should have restored his electric service at St. Louis Ave. after he requested re-connection on November 21, 2014, which was more than six months after his service had been disconnected. At the time of his request, Ameren Missouri created a new account for him at St. Louis Ave. and issued a connect order, but held up re-connecting service pending the completion of a wiring inspection by the City of St. Louis, which is required by city ordinance for any structure that has not been in use for more than six months. Since Ameren Missouri refused to commence service at St. Louis Ave. upon Mr. Fisher's request for service, that refusal constitutes a denial of service.[49]

A utility may refuse to provide service to a person for "failure to pay a delinquent utility charge for services provided by that utility…that is not subject to dispute…" and shall inform the person in writing.[50] Mr. Fisher's outstanding account balance of $4,770.05 for St. Louis Ave. was not in dispute when he requested re-connection, and Ameren Missouri subsequently informed Mr. Fisher by letter explaining what he needed to do in order to have his electric service re-connected at St. Louis Ave. Ameren Missouri was in compliance with Commission rules when it refused to commence service to St. Louis Ave. due to Mr. Fisher's failure to pay an undisputed delinquent charge for electric service.

A utility may also "refuse to commence service temporarily for reasons of …health, [or] safety…until the reason for such refusal has been resolved".[51] Ameren Missouri refused to re-connect service until Mr. Fisher complied with the city ordinance requiring a wiring inspection of his house since it had no service for more than six months. The

[49] Commission Rule 4 CSR 240-13.015(K).
[50] Commission Rule 4 CSR 240-13.035(1)(A).
[51] Commission Rule 4 CSR 240-13.035(4).

purpose of the ordinance is to ensure public health and safety relating to the installation and maintenance of electrical systems. It is reasonable to infer that it may not be safe to re-connect service to a residence which has not had service for more than six months without an inspection of the wiring, especially in this case where the wiring in the house had been cut by vandals and not yet repaired. The Commission finds that Ameren Missouri's requirement for a wiring inspection was in compliance with the St. Louis City ordinance and was based on reasons of public health and safety.

Mr. Fisher argues that Ameren Missouri has a fiduciary duty as the monopoly provider of electric service in St. Louis to provide him with electric power even though he cannot pay the bill he has accrued, and to forgive his bill or charge him a lesser amount based on his income because he is a veteran, disabled, and impoverished. Mr. Fisher does not cite, nor is the Commission aware of, any particular state law or Commission rule that would impose such duties on Ameren Missouri. To the contrary, Missouri law specifically prohibits a utility from charging or receiving greater or less compensation for electric service than the utility charges any other person for similar service under the same circumstances, and prohibits the utility from granting any undue or unreasonable preference or advantage to any person.[52] The Commission concludes that Ameren Missouri's refusal to commence service to St. Louis Ave. was lawful and proper because Mr. Fisher had not paid an undisputed delinquent charge for electric service, and Mr. Fisher failed to obtain the necessary wiring inspection from the City of St. Louis for his house at St. Louis Ave.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions,

[52] Section 393.130.2 and 393.130.3, RSMo 2016.

the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Mr. Fisher has failed to meet, by a preponderance of the evidence, his burden of proof to demonstrate that Ameren Missouri violated any statute, Commission rule, order or tariff provision. Mr. Fisher's complaint will be denied on the merits.

THE COMMISSION ORDERS THAT:

1. Jerreld Fisher's complaint is denied.
2. This Report and Order shall become effective on December 16, 2017.
3. This file shall close on December 17, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Bushmann, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City Power & Light Company for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage an Electric Utility System to Provide Electric Service in Johnson and Pettis Counties, Missouri as an Expansion of its Existing Certificated Area	)	**File No. EA-2018-0021**

ORDER APPROVING STIPULATION AND AGREEMENT

Certificates

§29. Unauthorized operation or construction

Kansas City Power and Light Company admitted that it served and billed customers for electric service that were located in KCP&L Greater Missouri Operations Company's certificated area and in an uncertificated area outside the boundary of Kansas City Power and Light Company's certificated service area without specific Commission authority.

Electric

§3. Certificate of convenience and necessity

The Commission approved a stipulation granting Kansas City Power and Light Company a certificate of convenience and necessity to provide electric service in Johnson and Pettis Counties as an extension of its certificated area.

Evidence, Practice and Procedure

§8. Stipulation

The Commission approved the unanimous stipulation of Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, the Staff of the Missouri Public Commission, and the Office of the Public Counsel.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 30th day of November, 2017.

In the Matter of the Application of Kansas City Power & Light Company for Permission and Approval and a Certificate of Convenience and Necessity to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage an Electric Utility System to Provide Electric Service in Johnson and Pettis Counties, Missouri as an Expansion of its Existing Certificated Area	)	**File No. EA-2018-0021**

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: November 30, 2017 Effective Date: January 2, 2018

On July 20, 2017, Kansas City Power & Light Company ("KCP&L") filed an *Application for Certificate of Convenience and Necessity* to include in its certificated area some customers it was already serving in Johnson and Pettis counties, outside its certificated area. On November 20, 2017, KCP&L, KCP&L Greater Missouri Operations Company ("GMO"), the Staff of the Missouri Public Commission ("Staff"), and the Office of the Public Counsel ("OPC") filed a unanimous stipulation and agreement regarding KCP&L's application.

The unanimous stipulation and agreement indicates all parties agree that KCP&L's application for a certificate of convenience and necessity is in the public interest and advise the Commission to approve that application pursuant to the stipulation. The unanimous stipulation and agreement contains the following specific terms and conditions:

1. KCP&L admits that it served and billed customers for electric service that were located in GMO's certificated area and in an uncertificated area outside the boundary of KCP&L's certificated service area without specific Commission authority. Granting KCP&L's CCN under the unanimous stipulation lawfully incorporates these customers into its certificated service area.

2. That the Commission withdraw GMO's existing CCN for the following area:

TOWNSHIP	RANGE	SECTIONS
47North	24 West	12, 13, 24 and 25

3. KCP&L and GMO agree to file tariff revisions to reflect the above CCN changes.

4. KCP&L agrees to pay the sum of Five Thousand Dollars ($5,000) to the Public School Fund of the State of Missouri. This payment shall be due within 30 days after the effective date of a Commission order in File No. EA-2018-0021 approving this Stipulation. KCP&L agrees not to seek or recover this payment in rates.

5. KCP&L already had assent from Pettis County, Missouri for the siting of its facilities. KCP&L has recently obtained assent from Johnson County, Missouri for the siting of its facilities in the public right-of-way. A copy of the Johnson County assent is attached to the *Unanimous Stipulation and Agreement* as Appendix C.

6. KCP&L has served the customers listed on *Unanimous Stipulation and Agreement* Appendix A for many years and has taken their small amount of annual usage (334,776 kWh from Oct. 2016 to Sept. 2017) into account in its

preferred resource plan. Therefore, KCP&L does not believe that certification under 4 CSR 240-22.080(18) is required.

7. Attached to the *Unanimous Stipulation and Agreement* as Appendix D is a plat map as required by 4 CSR 240-3.105(1)(4).

8. Staff and OPC agree not to seek or support the imposition of penalties against KCP&L for the provision of service beyond its certificated area in Johnson and Pettis counties for the territory described herein or for other matters related to the unauthorized provision of service to customers as identified in confidential Appendix A.

The *Unanimous Stipulation and Agreement* also contains general provisions regarding the rights of the parties which the Commission will approve as stated in the *Unanimous Stipulation and Agreement*.

The *Unanimous Stipulation and Agreement* contains the agreement in its entirety. After reviewing the unanimous stipulation and agreement, the Commission finds it to be reasonable. The Commission will approve the stipulation and agreement. Based on that stipulation and agreement, the Commission finds that KCP&L's request for authority to own and operate an electric utility system is necessary or convenient for the public service.

THE COMMISSION ORDERS THAT:

1. The unanimous stipulation and agreement filed on November 20, 2017, is approved. A copy of the stipulation and agreement is attached to this order.

2. The signatory parties are ordered to comply with the terms of the stipulation and agreement.

3. KCP&L shall pay the sum of Five Thousand Dollars ($5,000) to the Public School Fund of the State of Missouri. This payment shall be due within 30 days of the effective date of this order.

4. The Commission withdraws GMO's existing CCN for the following area:

TOWNSHIP	RANGE	SECTIONS
47North	24 West	12, 13, 24 and 25

5. KCP&L and GMO shall file tariff revisions to reflect the above CCN changes within 30 days of the effective date of this order.

6. KCP&L has taken account of the annual usage of the customers in the above area in its preferred resource plan. Therefore no certification under 4 CSR 240-22.080(18) is required.

7. This order shall become effective on January 2, 2018.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Regulatory Law Judge,

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC's Lead Service Line Replacement Program.	))))	**File No. WU-2017-0296**

REPORT AND ORDER

Accounting

§4. Jurisdiction and powers of the State Commission

MAWC must comply with the requirements of NARUC USOA when reporting its accounts and records to the Commission. However, after a hearing, the Commission can change the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited. Citing 4 CSR 240-50.030 and Section 393.140(8).

§8. Uniform accounts and rules

The Commission can "prescribe uniform methods of keeping accounts, records and books, to be observed by . . . water corporations[.]" The Commission can also, "after hearing, . . . prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited." Water corporations must use the Uniform System of Accounts (USoA) issued by the National Association of Regulatory Utility Commissioners (NARUC) in 1973 and revised in July 1976.

§9. Methods of accounting generally

The costs for the lead service line replacement are material, unusual and infrequent and, therefore, extraordinary. Thus, those costs meet the traditional standard the Commission has applied in deciding accounting authority order cases. This material and extraordinary LSLR Program is appropriate for an AAO.

§9. Methods of accounting generally

MAWC must comply with the requirements of NARUC USOA when reporting its accounts and records to the Commission. However, after a hearing, the Commission can change the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited. Citing 4 CSR 240-50.030 and Section 393.140(8).

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC's Lead Service Line Replacement Program.	))))	**File No. WU-2017-0296**

REPORT AND ORDER

Issue Date: **November 30, 2017**

Effective Date: **December 10, 2017**

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American Water Company for an Accounting Order Concerning MAWC's Lead Service Line Replacement Program.	))))	**File No. WU-2017-0296**

REPORT AND ORDER

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REGULATORY LAW JUDGE: Ronald D. Pridgin. Deputy Chief

Procedural History

On May 12,[1] Missouri-American Water Company ("MAWC") filed an application seeking an accounting authority order ("AAO") for the cost of replacing the customers' portion of MAWC's lead service lines. The Commission granted applications to intervene filed by: Missouri Industrial Energy Consumers ("MIEC"), Midwest Energy Consumers Group ("MECG"), Consumers Council of Missouri ("CCM"), and the Missouri Department of Economic Development ("DED").

The Commission held an evidentiary hearing on September 27. Initial post-hearing briefs were filed on October 19, with reply briefs submitted on October 30.

Findings of Fact

1. 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

[1] Calendar references are to 2017, unless otherwise noted.

weight and credibility decisions throughout this order as to specific items of testimony as is necessary.[2]

2. 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.[3]

3. MAWC is a Missouri corporation in good standing. MAWC serves approximately 463,700 water customers, and approximately 12,400 sewer customers. MAWC is a "water corporation", "sewer corporation" and "public utility" regulated by the Commission.[4]

4. A water service line is a pipeline through which water flows into a customer's premise. The water service line connects a utility-owned water main that is part of a water distribution pipeline system throughout the water utility's service area to a customer's premise. For most customers, the water main is near or under a street.[5]

5. In most cases, the water utility owns the portion of the water service line between the water main and a point at or near the property line. At this location, there is often a utility-owned water meter. The remaining portion of the water service line is owned by the customer. However, in St. Louis County, customers own the entire water service line between the water main and the premise.[6]

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[2] 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. Pub. Counsel v. Mo. Pub. Serv. Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).
[3] An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Mo. Office of Pub. Counsel v. Pub. Serv. Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).
[4] Application, ¶1-2 (filed May 12, 2017)
[5] Ex. 11, pp. 2-3.
[6] Id. at 3.

6. MAWC proposes to replace the entire lead portion of service lines in St. Louis County from the newly installed water main to the customer's home when service lines containing lead are discovered.[7]

7. The advantage of full lead service line replacement ("LSLR") is that it does not cause the increased risk of lead contamination exposure that would be caused by partial LSLR. The Environmental Protection Agency recommends full LSLR.[8]

8. MAWC is embarking upon the LSLR program because lead is a naturally occurring metal that is harmful if inhaled or swallowed, particularly to children and pregnant women. Lead exposure can cause a variety of adverse health effects. For example, lead exposure can cause developmental delays in babies and toddlers and deficits in the attention span, hearing and learning abilities of children. It can also cause hypertension, cardiovascular disease and decreased kidney function in adults. The most common sources of lead exposure are paint and dust, but lead can also be found in drinking water. Recent events, including those in Flint, Michigan, have heightened concern about the presence of lead in drinking water.[9]

9. MAWC has a program to replace water mains throughout its service areas. The main replacement is prioritized by considering a variety of factors, including the condition of the main, gauged by a combination of leaks or breaks in the line, pressure and flow conditions, and pipe age and material. MAWC also coordinates with local municipalities to replace mains in conjunction with road projects. It is during this regular main replacement process that MAWC anticipates replacing the lead service lines. Under

[7] Ex. 4, p. 4.
[8] Ex. 13, p. 4.
[9] Ex. 1, p. 6.

the LSLR Program, when the Company encounters lead service lines during a main replacement project, it will replace the lead portion of the service line.[10]

10. The Commission has maintained a policy of limiting AAOs to costs associated with extraordinary events. "Extraordinary events" are those that are unusual in nature and infrequent in occurrence.[11]

11. The LSLR Program costs MAWC is proposing to defer are extraordinary because these costs are incurred to replace customer owned service lines. It is not a normal utility policy or practice to replace or repair property that is not owned by the utility.[12] Once the lead service lines are replaced, the problem will not recur because the lead will not remain in the lines.[13]

12. The Commission has considered the materiality of costs compared to net income to determine whether the costs are extraordinary. The standard the Commission has used in past AAO cases was the costs must be at least five percent of net income to be considered material.[14]

13. The cost for the LSLR is estimated to be about 11.5% of MAWC's 2016 net income.[15]

14. The extraordinary circumstance in this case is the public health issue of lead in MAWC's water distribution system.[16]

15. If the Commission decided to deny MAWC's application for an AAO, MAWC would stop the LSLR program.[17]

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[10] Ex. 7, p. 5.
[11] Ex. 12, pp. 2-3.
[12] Id.
[13] Ex. 1, pp. 10-12; Ex.
[14] Ex. 17, pp. 4-5.
[15] Ex. 5, p. 3.
[16] Ex. 4, p. 7.
[17] Tr. Vol. 2, p. 141.

16. The timeframe for the AAO for the LSLR Program runs from January 1, 2017 through May 31, 2018.[18]

17. MAWC has acquiesced to applying its short-term debt rate to the carrying costs associated with this AAO.[19]

18. The appropriate account to which MAWC should book this AAO is NARUC Account 186, with ratemaking treatment not addressed in this case but in MAWC's pending general rate case, which will likely result in new rates being established in May, 2018.[20]

Conclusions of Law

The Commission can "prescribe uniform methods of keeping accounts, records and books, to be observed by . . . water corporations[.]"[21] The Commission can also, "after hearing, . . . prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."[22] Water corporations must use the Uniform System of Accounts (USoA) issued by the National Association of Regulatory Utility Commissioners (NARUC) in 1973 and revised in July 1976.[23]

The USoA, in its General Instruction No. 7, specifically states:

> It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments….Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.

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[18] Id. at p. 182.
[19] Tr. Vol. 2, p. 158.
[20] Ex. 12, p. 4; Ex. 18, p. 2; Ex. 6, p.3; Tr. Vol. 2, p. 158, 179.
[21] Section 393.140(4) RSMo.
[22] Section 393.140(8) RSMo.
[23] Commission Rule 4 CSR 240-50.030(1)

The Uniform System of Accounts defines "extraordinary items" as:

> [t]hose items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company.... Accordingly, they will be events and transactions of significant effect which would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business.... 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.[24]

Decision

Applying the facts to the pertinent law, the Commission finds that MAWC qualifies for the AAO it seeks. The costs for the LSLR are material, unusual and infrequent and, therefore, extraordinary. Thus, those costs meet the traditional standard the Commission has applied in deciding AAO cases. The public policy related to lead in drinking water and its adverse health effects is particularly persuasive in this case. MAWC'S LSLR Program adheres to the recommended method of lead removal and eliminates the risk of lead containment that exists with partial lead pipe replacements. This material and extraordinary LSLR Program is appropriate for an AAO.

[24] State ex. rel. Office of the Pub. Counsel v. Pub. Serv. Comm'n of Mo., 858 S.W.2d 806, 810 (Mo. App. 1993).

The other issues some parties have raised, such as regulatory asset treatment of the costs, alleged tariff violations, and the necessity of the LSLR itself, can be addressed in MAWC's pending rate case. Indeed, an AAO is simply approval to defer costs, the ultimate recovery of which may be considered in a future rate case. The recovery of those costs is in no way guaranteed by the Commission granting an AAO.[25]

THE COMMISSION ORDERS THAT:

1. The application for an Accounting Authority Order filed by Missouri-American Water Company is granted as further specified herein.

2. Missouri-American Water Company is granted authority to defer and book to Account 186 the costs of all customer-owned lead service line replacements made from January 1, 2017 through May 31, 2018, using its short-term borrowing rate as its carrying cost.

3. Missouri-American Water Company may defer and maintain these costs on its books until the effective date of the Report and Order in its pending general rate case, with any amortization beginning with the effective date of that Report and Order.

4. Nothing in this Order shall be considered a finding by the Commission of the value or prudence for ratemaking purposes of the properties, transactions and expenditures herein involved. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions and expenditures herein involved in a later proceeding.

[25] Id. See also State ex. rel. Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n, 301 S.W.3d 556, 567-68 (Mo. App-. W.D. 2009); Missouri Gas Energy v. Mo. Pub. Serv. Comm'n, 978 S.W.2d 434, 438 (Mo App. W.D. 1998).

5. All other requests for relief not specifically granted are denied.

6. This order shall become effective December 10, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 30th day of November, 2017.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Missouri-American Water Company Application for a Certificate of Convenience and Necessity Authorizing It to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Sewer System in an Area of St. Louis County, Missouri (Radcliffe Place)	))))))	**File No. SA-2018-0068**

Order Granting Certificate of Convenience and Necessity

Certificate

§21. Grant or refusal of certificate generally

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.

§47. Sewers

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."

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 6th day of December, 2017.

In the Matter of Missouri-American Water Company Application for a Certificate of Convenience and Necessity Authorizing It to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Sewer System in an Area of St. Louis County, Missouri (Radcliffe Place)	))))))	**File No. SA-2018-0068**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: December 6, 2017 Effective Date: December 16, 2017

Missouri-American Water Company ("MAWC") filed an application on September 7, 2017, with the Missouri Public Service Commission ("Commission") requesting a Certificate of Convenience and Necessity ("CCN") to install, own, acquire, construct, operate, control, manage, and maintain a sewer system in the Radcliffe Place subdivision ("Radcliffe Place") in St. Louis County, Missouri. 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.

The CCN would allow MAWC to acquire sewer utility assets of the Radcliffe Place Community Services Association, Inc. ("Association"), a homeowner's association not currently subject to the Commission's jurisdiction. MAWC would provide sewer service for Radcliffe Place's 128 residential customers. MAWC already provides water service to Radcliffe Place.

The Commission issued notice and set a deadline for intervention requests, but received no requests. On November 9, 2017, the Commission's Staff filed its recommendation to approve the transfer of assets and grant a CCN, with certain conditions.

Commission Rule 4 CSR 240-2.080(13) allows parties ten days to respond to pleadings unless otherwise ordered by the Commission. The Commission issued no order to the contrary of that rule, and no party has objected to MAWC's application or Staff's recommendation. Thus, the Commission will rule upon the application unopposed.[1]

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]

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[1] The Commission may grant the certificate without holding a hearing. *See 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).

There is a need for the service as 128 residents of Radcliffe Place currently make use of the existing 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 as no external financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is not unrealistic given its prior experience and past performance. The proposal promotes the public interest as demonstrated by the Association's members 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 sewer service to the customers currently served by the Association. Further, the Commission finds that MAWC possesses adequate technical, managerial, and financial capacity to operate the sewer system it wishes to purchase from the Association. Thus, the Commission will authorize the transfer of assets and grant MAWC the certificate of convenience and necessity to provide sewer service within the proposed service area, subject to the conditions described by Staff and MAWC's statement that it will not seek to recover any acquisition premium.

MAWC's application also asks the Commission to waive the 60-day notice requirement in 4 CSR 240-4.017(1). MAWC asserts there is good cause for granting such waiver because it did not engage in conduct that would constitute a violation of the Commission's ex parte rule, and no asset purchase agreement existed within 60 days prior to filing its application. The Commission finds good cause exists to waive the notice requirement, and a waiver of 4 CSR 240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Missouri-American Water Company is granted a certificate of convenience and necessity to provide sewer service to the Radcliffe Place subdivision described in the revised map and legal description Missouri-American Water Company provided to Staff, subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:

a. Missouri-American Water Company shall apply the existing sewer rates and service charges that currently apply to its Cedar Hill service area, except Connection Charges and Capacity Charges included on the Schedule of Service Charges applicable to MAWC's Cedar Hill service area shall not apply to the Radcliffe Place service area;

b. Missouri-American Water Company shall submit new tariff sheets, to become effective before closing on the assets, to include new sheets with the service area map and service area metes and bounds description, revised tariff sheets with notations showing approved rates and service charges, and a revised tariff sheet to include Rule 13.B.1. applicable to Radcliffe Place, all to be included in its sewer tariff PSC MO No. 26;

c. Missouri-American Water Company's existing approved depreciation rates for sewer assets shall apply to the Radcliffe Place service area assets;

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

e. If Missouri-American Water Company determines that a transfer of the assets will not occur, it shall notify the Commission no later than the date of the next status report, as addressed above, after such determination is made. In addition, Missouri-American Water

Company shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Radcliffe Place service area in its sewer tariffs;

f. Missouri-American Water Company shall keep its financial books and records for Radcliffe Place plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

g. Missouri-American Water Company shall provide an example of its actual communication with the Radcliffe Place service area customers regarding its acquisition and operations of the Radcliffe Place sewer system assets, and how customers may reach Missouri-American Water Company, within ten days after closing on the assets;

h. Missouri-American Water Company shall obtain from Radcliffe Place, as best as possible prior to or at closing, all records and documents, including but not limited to all plant-in-service original cost documentation, depreciation reserve balances, documentation of contributions-in-aid-of-construction (CIAC) transactions, and any capital recovery transactions;

i. Missouri-American Water Company shall provide in its next general rate case an analysis documenting its proposed rate base values for Radcliffe Place's sewer system assets, including an appropriate offset for associated CIAC;

j. The Commission specifically makes no finding that would preclude it from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the certificate of convenience and necessity to Missouri-American Water Company, including expenditures related to the Radcliffe Place certificated service area and capacity adjustments, in any later proceeding;

k. Missouri-American Water Company shall ensure adherence to Commission Rules at 4 CSR 240-13 with respect to Radcliffe Place customers;

l. Missouri-American Water Company shall include the Radcliffe Place customers in its established monthly reporting to the Staff Consumer & Management Analysis Unit (CMAU) on customer service and billing issues;

m. Missouri-American Water Company shall distribute to the Radcliffe Place 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 Rules at 4 CSR 240-13.-4- (2) (A-L), within ten days of closing on the assets;

n. Missouri-American Water Company shall provide adequate training for the correct application of rates and rules, including sewer charges, to all customer service representatives prior to Radcliffe Place customers receiving their first bill from Missouri-American Water Company that include sewer charges; and,

o. Missouri-American Water Company shall provide to the CMAU staff a sample of ten billing statements from the first month's billing within 30 days of such billing.

2. Missouri-American Water Company is authorized to acquire Radcliffe Place Association's assets identified in the application.

3. Missouri-American Water Company is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the application.

4. This order shall become effective on December 16, 2017.

5. This file shall be closed on December 17, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Deputy Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Brandon Jessip for Change of Electric Supplier from Empire District Electric to New-Mac Electric	)))	**File No. EO-2017-0277**

REPORT AND ORDER

<u>Electric</u>

§4.1. Change of suppliers

The Commission weighed 10 factors in a balancing test, on a case-by-case analysis, to determine "public interest" for a change of supplier. Change of an electric supplier is restricted to provide assurance to the utility that money spent on facilities to serve a customer is not wasted absent a compelling reason. Basing a change of supplier request on the difference in the amounts charged is a prohibited reason by statute to change electric suppliers.

<u>Service</u>

§7.1. Change of suppliers

The Commission weighed 10 factors in a balancing test, on a case-by-case analysis, to determine "public interest" for a change of supplier. Change of an electric supplier is restricted to provide assurance to the utility that money spent on facilities to serve a customer is not wasted absent a compelling reason. Basing a change of supplier request on the difference in the amounts charged is a prohibited reason by statute to change electric suppliers.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Brandon)
Jessip for Change of Electric Supplier from)
Empire District Electric to New-Mac Electric)

File No. EO-2017-0277

REPORT AND ORDER

Issue Date: December 20, 2017

Effective Date: January 19, 2018

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Brandon)
Jessip for Change of Electric Supplier from) **File No. EO-2017-0277**
Empire District Electric to New-Mac Electric)

APPEARANCES

Brandon Jessip, 11728 Palm Road, Neosho, Missouri, on behalf of himself as a pro se applicant.

Appearing for **The Empire District Electric Company**:

Diana C. Carter, Brydon, Swearengen & England P.C., 312 East Capitol Avenue, PO Box 456, Jefferson City, Missouri 65102-0456.

Appearing for **New-Mac Electric Cooperative, Inc.**:

Megan E. Ray, Andereck, Evans, Widger, Lewis & Figg, L.L.C., 3816 S. Greystone Ct., Suite B, Springfield, Missouri 65804.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**:

Nathan Williams, Deputy Staff Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER

I. Procedural History

On April 20, 2017, Brandon Jessip filed an application with the Missouri Public Service Commission ("Commission") requesting that his electric supplier be changed from The Empire District Electric Company ("Empire") to New-Mac Electric Cooperative, Inc. ("New-Mac"). The Commission issued notice of the application and made both Empire and New-Mac parties to this proceeding. Empire filed a response to the application, stating that Empire has the right under Section 393.106, RSMo 2016[1] to continue as the electric service provider for Mr. Jessip's property and denying that a change of supplier would be in the public interest. New-Mac responded that it takes no position on whether Mr. Jessip has demonstrated that a change of supplier would be appropriate, but that if the application is approved, New-Mac has sufficient ability to become Mr. Jessip's electric supplier.

The Commission's Staff filed a motion to dismiss the application, requesting that Mr. Jessip be permitted to choose an electric provider without further order from the Commission, or in the alternative, to grant the application. That motion was denied. Because there were material facts in dispute, the Commission held an evidentiary hearing on October 10, 2017, in Jefferson City, Missouri, to address Mr. Jessip's application.[2] During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. By Section 393.106, RSMo, does The Empire District Electric Company presently have the right to continue to serve any of the structures on the

[1] All statutory references are to the Revised Statutes of Missouri as codified in 2016, unless otherwise stated.
[2] Transcript, Volume 2 (hereinafter, "Tr."). In total, the Commission admitted the testimony of 3 witnesses and received 19 exhibits into evidence. Post-hearing reply briefs were filed on November 15, 2017, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record. "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

Jessips' approximately 30 acre tract of land located at 7082 Nighthawk Road, Neosho, Missouri?

2. If so, is it in the public interest for a reason other than a rate differential for those structures to be served by New-Mac Electric Cooperative, Inc., rather than The Empire District Electric Company?

II. Findings of Fact

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

1. Brandon Jessip currently resides at 11728 Palm Road, Neosho, Missouri and was, during certain times relevant hereto, a customer of Empire for electric service.[3]

2. Empire is a Kansas corporation with its principal place of business at 602 South Joplin Avenue, Joplin, Missouri 64801. Empire is engaged in the business of providing electric service in Missouri to customers in its service areas.

3. Empire is an "electrical corporation" and a "public utility" as those terms are defined in Section 386.020, RSMo 2016, and is subject to the jurisdiction and supervision of the Commission as provided by law.

4. The Office of the Public Counsel ("Public Counsel") "may represent and protect the interests of the public in any proceeding before or appeal from the public service commission."[4] Public Counsel "shall have discretion to represent or refrain from representing the public in any proceeding."[5] The Public Counsel did not participate in the evidentiary hearing in this matter.

[3] Ex. 1, Jessip Direct; Tr. p. 28, 36-38.
[4] Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).
[5] Section 386.710(3), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

5. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[6] Staff participated as a party in this matter.

6. At the evidentiary hearing, Empire presented the testimony of Patsy J. Mulvaney, who testified credibly regarding Empire's provision of electric service to the property located at 7082 Nighthawk Road, Neosho, Missouri ("Property") and Empire's documents and records pertaining to Mr. Jessip's account for electric service.[7]

7. The Property is located within Empire's certificated service area, and Empire began providing electric service to the Property on or before January 1, 1980. At that time, a house and barn were located on the Property.[8]

8. Empire provided permanent electric service to the Property from January 1, 1980 until August 25, 2010, when the resident at the time requested that service be turned off.[9]

9. Mr. Jessip and his wife purchased the Property on January 2, 2014. The Property purchased by the Jessips consisted of approximately 29.79 acres with a well, barn, and house which was unoccupied and uninhabitable.[10]

10. Mr. Jessip requested and began receiving electric service to the Property from Empire in September 2014.[11] Empire provided electric service through permanent electric facilities consisting of a transformer and a service line to the Jessip property from a distribution line in the Empire easement running along Nighthawk Road. The service line

[6] Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).
[7] Ex. 200, Mulvaney Rebuttal; Tr. p. 71-77.
[8] Ex. 200, Mulvaney Rebuttal, p. 2; Tr. p. 75.
[9] Ex. 200, Mulvaney Rebuttal, p. 2; Tr. p. 66, 73-74.
[10] Ex. 1, Jessip Direct.
[11] Ex. 1, Jessip Direct; Tr. p. 37-38, 75-76.

connected to an electric meter mounted on a pole located between the house and barn on the Property. The meter was connected to the house, barn and well for electric service.[12]

11. Mr. Jessip used electricity from Empire at the Property to operate the well pump in order to provide water to livestock. Mr. Jessip did not receive electric service from Empire to perform temporary construction work.[13]

12. Empire provided electric service to the Property until January 12, 2015, when service was discontinued at the request of Mr. Jessip because he was unhappy about the amount of some of the bills for service during the period of time from September 2014 to January 2015.[14] Mr. Jessip paid those bills and did not have any issues with Empire's service during that period of time.[15]

13. Mr. Jessip was billed for electric service pursuant to Empire's filed and approved tariffs, and he was not overcharged.[16]

14. At the time he discontinued service, Mr. Jessip also requested that Empire remove all its electric facilities from his Property.[17] Prior to discontinuing service, Mr. Jessip did not contact Empire regarding any electric charges, but his wife called Empire to ask about the amounts charged on a bill.[18] The Property is not currently receiving electric service from any electric provider.[19]

[12] Tr. p. 36, 43, 49-50, 66; Ex. 208.
[13] Tr. p. 50.
[14] Ex. 200, Mulvaney Rebuttal, p. 3-5; Ex. 1, Jessip Direct; Tr. p. 42.
[15] Tr. p. 41.
[16] Ex. 200, Mulvaney Rebuttal, p. 4.
[17] Ex. 1, Jessip Direct; Ex. 200, Mulvaney Rebuttal, p. 3.
[18] Ex. 200, Mulvaney Rebuttal, p. 4-5.
[19] Ex. 100, Beck Rebuttal, p. 6.

15. Mr. Jessip had intended to demolish the existing house on the Property, but changed his mind and began remodeling the house at the beginning of 2017 by repairing the existing walls of the house.[20]

16. Mr. Jessip requested a release from Empire so that New-Mac could provide electric service to his remodeled house on the Property, but Empire refused.[21]

17. New-Mac has an easement on the Property, and it has an electric line that runs through the center of the Property.[22]

18. Empire's electric line is approximately 50-75 feet closer to the house on the Property than New-Mac's electric line.[23] In order to resume service to the Property, Empire would only need to hang a transformer and run about 70 feet of overhead service line.[24]

19. Mr. Jessip filed his application to request a change of electric supplier because he was unhappy with the amount of Empire's bills for service in 2014; he was frustrated when Empire opposed his request to change his supplier to New-Mac; and he intends to build a new house on the Property which would be served by New-Mac, and it would be more convenient for him to have a single service provider for the Property.[25]

20. Empire serves approximately 202 customers within a two-mile radius of Mr. Jessip's Property.[26]

21. When Empire loses a customer, its remaining customers are negatively impacted because Empire's total cost to provide electric service to the public is shared by

[20] Ex. 1, Jessip Direct; Tr. p. 45-47.
[21] Ex. 1, Jessip Direct.
[22] Ex. 1, Jessip Direct; Tr. p. 37.
[23] Tr. p. 55; Ex. 208 and 209.
[24] Ex. 200, Mulvaney Rebuttal, p. 6.
[25] Tr. p. 57-61.
[26] Ex. 200, Mulvaney Rebuttal, p. 5.

all customers. Losing a customer hurts other customers because Empire is not using its system to its greatest capacity.[27]

III. Conclusions of Law

Although Mr. Jessip is not a person or an entity regulated by the Commission, he submitted himself to the Commission's jurisdiction when he filed his application pursuant to Section 393.106, RSMo 2016. Empire provides electric service to customers throughout the service area certificated to it by the Commission. Empire is an "electrical corporation" and "public utility" as those terms are defined by Section 386.020, RSMo 2016, and is subject to the Commission's jurisdiction, supervision, control and regulation as provided in Chapters 386 and 393, RSMo 2016.

Since Mr. Jessip brought the change of supplier application, he bears the burden of proof.[28] The burden of proof is the preponderance of the evidence standard.[29] In order to meet this standard, Mr. Jessip must convince the Commission it is "more likely than not" that his application should be granted.[30] Change of supplier cases for electrical corporations are governed by Section 393.106, RSMo 2016, (commonly referred to as the anti-flip flop law) which states, in part:

> 1. As used in this section, the following terms mean:
> (1) **"Permanent service"**, electrical service provided through facilities which have been permanently installed on a structure and which are designed to provide electric service for the structure's anticipated needs for the indefinite future, as contrasted with facilities installed temporarily to provide electrical

[27] Ex. 200, Mulvaney Rebuttal, p. 8.
[28] The Commission has determined in previous change of supplier cases that the burden of proof is on the applicant. See, Order Denying Joint Motion to Dismiss, *Richard D. Smith v. Union Electric Company d/b/a AmerenUE,* December 5, 2006, File No. EC-2007-0106; Report and Order, *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399,405-407 (1988), Case No. EO-88-196.
[29] *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).
[30] *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999).

> service during construction. Service provided temporarily shall be at the risk of the electrical supplier and shall not be determinative of the rights of the provider or recipient of permanent service;
> (2) **"Structure"** or **"structures"**, an agricultural, residential, commercial, industrial or other building or a mechanical installation, machinery or apparatus at which retail electric energy is being delivered through a metering device which is located on or adjacent to the structure and connected to the lines of an electrical supplier. Such terms shall include any contiguous or adjacent additions to or expansions of a particular structure. Nothing in this section shall be construed to confer any right on an electric supplier to serve new structures on a particular tract of land because it was serving an existing structure on that tract.
>
> 3. Once an electrical corporation or joint municipal utility commission, 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 and section 394.080, or pursuant to a territorial agreement approved under section 394.312. The public service commission, upon application made by an affected party, may order a change of suppliers on the basis that it is in the public interest for a reason other than a rate differential. The commission's jurisdiction under this section is limited to public interest determinations and excludes questions as to the lawfulness of the provision of service, such questions being reserved to courts of competent jurisdiction... (emphasis added)

IV. Decision

A. By Section 393.106, RSMo, does The Empire District Electric Company presently have the right to continue to serve any of the structures on the Jessips' approximately 30 acre tract of land located at 7082 Nighthawk Road, Neosho, Missouri?

The evidence demonstrated that all the elements of Section 393.106 have been satisfied, which provides Empire the exclusive right to continue to serve the structures on the Jessip's Property. That right was triggered when Empire lawfully commenced supplying retail electric energy to structures on the Property through permanent service facilities by at least 1980. In the past, Empire has provided permanent service to the house, which is the same one that Mr. Jessip is now remodeling, as well as to the barn and well. The house on the Property meets the statutory definition of a "structure", as it is a residential building at

which retail electric energy was being delivered through a metering device located adjacent to the house. There is no language in the current statute that would support Staff's position that a service disruption and the passage of time would render the anti-flip flop provision inapplicable. Also, the two exemptions in that statute regarding municipal annexation and territorial agreements do not apply in this case. Therefore, the Commission concludes that Empire has the right to continue to serve structures on the Property unless the Commission determines that the requested change would be in the public interest for a reason other than a rate differential.

B. Is it in the public interest for a reason other than a rate differential for those structures to be served by New-Mac Electric Cooperative, Inc., rather than The Empire District Electric Company?

The Commission does not use a single factor test when determining whether an application for a change of electric suppliers should be granted, and has stated that customer preference does not suffice as the only basis for ordering a change in supplier.[31] In previous cases the Commission has conducted a case-by-case analysis applying a ten-factor balancing test to analyze the meaning of "public interest" for a change of supplier. Those ten factors are:

> (A) Whether the customer's needs cannot adequately be met by the present supplier with respect to either the amount or quality of power;
>
> (B) Whether there are health or safety issues involving the amount or quality of power;
>
> (C) What alternatives a customer has considered, including alternatives with the present supplier;
>
> (D) Whether the customer's equipment has been damaged or destroyed as a result of a problem with the electric supply;

[31] *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399,405-407 (1988), Case No. EO-88-196.

> (E) The effect the loss of the customer would have on the present supplier;
>
> (F) Whether a change in supplier would result in a duplication of facilities, especially in comparison with alternatives available from the present supplier, a comparison of which could include:
>
> (i) the distance involved and cost of any new extension, including the burden on others -- for example, the need to procure private property easements, and
>
> (ii) the burden on the customer relating to the cost or time involved, not including the cost of the electricity itself;
>
> (G) The overall burden on the customer caused by the inadequate service including any economic burden not related to the cost of the electricity itself, and any burden not considered with respect to factor (F)(ii) above;
>
> (H) What efforts have been made by the present supplier to solve or mitigate the problems;
>
> (I) The impact the Commission's decision may have on economic development, on an individual or cumulative basis; and
>
> (J) The effect the granting of authority for a change of suppliers might have on any territorial agreements between the two suppliers in question, or on the negotiation of territorial agreements between the suppliers.[32]

Even if in the public interest, for Mr. Jessip to prevail the Commission must also determine that the reason Mr. Jessip wishes to change suppliers is for a reason other than a rate differential. Rates are defined as what a customer pays for a unit of service.[33]

A primary policy reason for the anti-flip flop law is to provide some assurance to electric utilities that if they spend money to build facilities to provide service to a customer, they will be able to keep that customer absent some compelling reason to allow a change of supplier. In this case, Empire provided electric service to the Property in the past and would still have facilities in place to provide that service now had not Mr. Jessip requested

[32] Report and Order, *In the Matter of the Application of Thomas L. Chaney for Change of Elec. Supplier*, 22 Mo. P.S.C. 3d 339, 342-343, File No. EO-2011-0391 (Dec. 12, 2012); Order Denying Joint Motion to Dismiss, *Richard D. Smith v. Union Electric Company d/b/a AmerenUE,* December 5, 2006, File No. EC-2007-0106; Report and Order, *In the Matter of Cominco American, Inc. for Authority to Change Electrical Suppliers*, 29 Mo. P.S.C. (N.S.) 399,405-407 (1988), Case No. EO-88-196.

[33] Report and Order, *In the Matter of the Application of Thomas L. Chaney for Change of Elec. Supplier*, 22 Mo. P.S.C. 3d 339, 344, File No.EO-2011-0391 (Dec. 12, 2012).

that those facilities be removed. Permitting a customer to change an electric supplier according to his or her preference by requesting the removal of electric facilities would be contrary to that public policy, as it would increase the risk of unnecessary duplication of those facilities.

Mr. Jessip has not presented any evidence demonstrating that Empire is unable to meet his needs regarding the amount or quality of power; that power supplied by Empire presents a health or safety issue; that Empire's power supply damaged his equipment; that Empire's provision of electric service to the Property would negatively impact economic development in the area; or that Empire's electric service creates any burden on Mr. Jessip not related to the cost of electricity itself. The evidence did show that Mr. Jessip did not make reasonable attempts to resolve or mitigate his concerns relating to the amount of his electric bills. Also, while both Empire and New-Mac provide electric service in the area where the Property is located, Empire's electric line is closer to the Property than the New-Mac electric line. After considering all the factors described above, the Commission concludes that granting Mr. Jessip's request for a change of electric supplier would not be in the public interest. In addition, one of the primary reasons why Mr. Jessip requested a change in supplier was the amount of electric bills for electric service provided by Empire. Basing a change of supplier request on the difference in amounts charged by electric providers is prohibited by Section 393.106, so Mr. Jessip's reason is not an appropriate ground for granting such a request.

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Mr. Jessip has failed to meet, by a preponderance of the

evidence, his burden of proof to demonstrate that a change of electric supplier should be granted. Therefore, Mr. Jessip's application will be denied.

THE COMMISSION ORDERS THAT:

1. Brandon Jessip's application for a change of electric supplier is denied.
2. This Report and Order shall become effective on January 19, 2018.
3. This file shall close on January 20, 2018.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, and Coleman, CC., concur,
Rupp, C., dissents;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 20th day of December, 2017.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Missouri-American Water Company for an	)	**File No. WU-2017-0351**
Accounting Authority Order Related to Property	)	
Taxes in St. Louis County and Platte County	)	

REPORT AND ORDER

Accounting
§38. Taxes
§42. Accounting Authority Orders

Expense
§17. Extraordinary and unusual expenses
§67. Taxes

Water
§32. Accounting Authority Orders

Summary: A Company did not meet the standards for an AAO permitting it to record a property tax increase as a deferred debt where the increase occurred because a county changed from a 7-year recovery period to a 20-year recovery period. The change and resulting tax increase were not "extraordinary" events, i.e., nonrecurring, unusual or unique events. The Company had been notified 10 years before that an updated class life should be used to calculate property taxes. Those responsible for reviewing the Company's property tax declarations were cognizant a recovery period change was inevitable. Twenty-three of 24 Missouri counties had started using the 20-year recovery period, and the Company could have requested an AAO when that occurred if it thought the change was extraordinary. The recovery period change from 7 years to 20 years did not result from a new methodology, but from a Company error the county previously allowed through an oversight, but then corrected. The increase was no surprise to the Company. Finally, an AAO would violate the "matching principle."

_____

Evidence, Practice and Procedure

§6. Weight, effect and sufficiency

Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". Citing State ex rel. Pub. Counsel v. Mo. Pub. Serv. Comm'n, 289 S.W.3d 240, 247 (Mo. App. 2009).

Water

§32. Accounting Authority Orders

An AAO is a deferral mechanism that allows a utility to "defer and capitalize certain expenses until it files its next rate case." An AAO is not a rate-making decision. Although an AAO allows a cost to be placed in a separate account for future consideration, it does not create an expectation of recovery, nor does it bind the Commission to any particular ratemaking treatment. Citing Mo. Gas Energy v. Pub. Serv. Comm'n, 978 S.W.2d 436 (Mo.App W.D. 1998).

A tracker is similar to an AAO. The use of trackers should be limited since they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentive for a utility to operate efficiently. Citing Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. V. Pub. Serv. Comm'n, 509, S.W.3d 757 (Mo.App. W.D. 2016).

Expense

§17. Extraordinary and unusual expenses

When evaluating whether an event should be considered extraordinary, the Commission will look to the appropriate Uniform System of Accounts for guidance. However, for accounting purposes, the consistent meaning of an extraordinary item is an event that is considered unique, unusual and nonrecurring. Citing Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. V. Pub. Serv. Comm'n, 509, S.W.3d 757, 769-770 (Mo.App. W.D. 2016).

Public Utilities

§2. Nature of

"The public service commission... and its powers are referable to the police power of the state....It has a staff of technical and professional experts to aid it in the accomplish of its statutory powers...." Citing State ex rel. Union Elec Co. v. Public Service Com'n of State of Mo., 765 S.W.2d 618, 621-622 (Mo.App. W.D. 1988), quoting Chicago, Rock Island & Pacific Railroad Company v. Public Service Commission, 312 S.W.2d 791, 796 (Mo. banc 1958).

Accounting

§4. Jurisdiction and powers of the State Commission

§9. Methods of accounting generally

MAWC must comply with the requirements of NARUC USOA when reporting its accounts and records to the Commission. However, after a hearing, the Commission can change the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited. Citing 4 CSR 240-50.030 and Section 393.140(8).

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Missouri-American Water Company for an	)	**File No. WU-2017-0351**
Accounting Authority Order Related to Property	)	
Taxes in St. Louis County and Platte County	)	

REPORT AND ORDER

Issue Date: **December 20, 2017**

Effective Date: **December 30, 2017**

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Missouri-American Water Company for an	)	**File No. WU-2017-0351**
Accounting Authority Order Related to Property	)	
Taxes in St. Louis County and Platte County	)	

REPORT AND ORDER

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REGULATORY LAW JUDGE: Kim S. Burton

Procedural History

On June 29, 2017,[1] Missouri-American Water Company ("MAWC" or "the Company") filed an application ("Application") seeking an accounting authority order ("AAO") that permits the Company to record as a deferred debit the increase in property taxes for the counties of St. Louis ("STLCO") and Platte ("Platte Co" jointly, "the Counties"). The Commission provided notice of the Application and granted applications to intervene filed by: Missouri Industrial Energy Consumers ("MIEC"), Midwest Energy Consumers Group ("MECG"), and St. Louis County, Missouri ("STLCO").

An evidentiary hearing was held on November 8. Initial post-hearing briefs were filed on November 22, with reply briefs submitted on December 1.

Findings of Fact

1. 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

[1] Calendar references are to 2017, unless otherwise noted.

specific weight and credibility decisions throughout this order as to specific items of testimony as is necessary.[2]

2. 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.[3]

3. MAWC is a Missouri Corporation with its principal place of business in St. Louis, Missouri. The Company is a "water corporation," a "sewer corporation," and a "public utility."[4] MAWC provides water service to approximately 463,700 customers in 24 Missouri counties. MAWC's water service territory includes cities such as St. Joseph, Warrensburg, Parkville, Riverside, Jefferson City, and parts of St. Charles.[5]

4. Property taxes are an annual recurring expense for utilities.[6] In each of the 24 Missouri counties in which MAWC operates, the Company is assessed annual property tax.[7]

5. When submitting its property declaration to STLCO, MAWC self-reports its personal property and separately self-reports equipment used in the gathering,

[2] 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. Pub. Counsel v. Mo. Pub. Serv. Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).
[3] An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. *State ex rel. Mo. Office of Pub. Counsel v. Pub. Serv. Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).
[4] EFIS Item No. 1, Application, ¶2. See Section 386.020, RSMo 2016. All statutory references are to the 2016 Revised Statutes of Missouri.
[5] EFIS Item No. 1, Application, ¶ 1, Ex. 3.
[6] Tr. 103.
[7] Ex. 3.

treatment, and distribution of water. That property is then assessed at 32% of its true value in money.[8]

6. Prior to 2007, a county assessor could assess local property based on factors of their choosing. Also prior to 2007, STLCO used a 7-year recovery period when calculating depreciation.

7. A statute was enacted to set a standard for county assessors to use to make the process fair and equitable across the state.[9]

8. Section 137.122(2) directed counties to assess property tax using"class life" as set out in the Modified Accelerated Cost Recovery System ("MACRS") life tables under the Internal Revenue Code.[10]

9. Under Section 137.122, to estimate the value of depreciable business personal property[11] placed in service after January 1, 2006, county assessors apply the appropriate class life and recovery period to the original cost of the property according to a statutorily set depreciation schedule.[12]

10. According to the appropriate MACRS class-life standard, equipment used in the gathering, treatment and distribution of water is to be assessed with a 20-year recovery period.[13]

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[8] Ex. 12, Q. 6. The type of property at issue in this case is personal property that is assessed as real estate under Chapter 137. Tr. p. 175-176.
[9] Tr. 184-185. See Section 137.122(2), RSMo.
[10] Section 137.122(2),RSMo. The "recovery period" over which the original cost of depreciable tangible personal property is depreciated for property tax purposes is set by statute to be the same as the recovery period allowed for such property under the Internal Revenue Code. See IRS Publication 946.
[11] "Business personal property" is tangible personal property which is used in a trade or business or used for production of income and which had a determinable life of longer than one year. Section 137.122(1), RSMo.
[12] Section 137.122.3,5 RSMo. Tr. 176.
[13] Ex. 12, Q 9., Tr. 195-196. IRS Publication 946.

11. Since approximately 2003, MAWC has employed Joseph C. Sansone Company ("Sansone") to act as the Company's authorized tax representative and submit its property tax information to STLCO.[14] Employees with MAWC's affiliate company American Water Services act as MAWC's point of contact to Sansone on the Company's property declarations since MAWC self-reports its property subject to assessment to the counties.[15] Elizabeth Arriaga is the current manager of the general tax group for American Water Services Company who provides Sansone information on MAWC's assets and is one of the two people who would review Sansone's property filings with STLCO.[16]

12. Since 2013, Suzanne Strain has served as the Manager of Personal Property Department of the St. Louis County Assessor's Office. She is responsible for planning, organizing, and implementing the valuation of all personal property in STLCO.[17]

13. On April 28, 2017, Sansone's Senior Director of Personal Property Services, Tammy Frost submitted MAWC's 2017 property declaration to STLCO. The submission reported the Company's personal and non-parcel real property owned as of January 1, 2017. The information was provided in an excel spreadsheet that listed the assessed values by tax district, along with "worksheets" to support MAWC's arrived at assessed values. MAWC's worksheets included a line item "assessment rate."[18]

14. Ms. Strain reviewed the worksheets in an attempt to discern how MAWC arrived at their listed assessed value. When MAWC submits its annual property report

[14] Tr. 63-64. Sansone also submits MAWC's property declarations for St. Charles County.
[15] Ex. 13, Tr. 70-72, 176-178.
[16] Tr. p70-72, 93-94.
[17] Ex. 12, Q. 1-2.
[18] Ex. 13., Ex. 12, Q. 7-9.

to STLCO, the Company is supposed to identify the original cost and the year the property was acquired. However, when MAWC submitted its reports to STLCO, it stated the assessed value per year for each taxing district, but did not report the depreciation factor used to calculate the assessed value.[19]

15. When reviewing MAWC's 2017 declaration, Ms. Strain realized that MAWC was using a 7-year recovery period to arrive at their assessment rate instead of the appropriate 20-year recovery period.[20] There are only two companies that STLCO assesses that have distributable property, Laclede Gas Company and MAWC. Laclede Gas Company submits its property declarations to STLCO using a 20-year recovery period.[21]

16. Approximately ten years earlier, on March 19, 2007, Ms. Frost sent an email to STLCO's then Personal Property Assessment Manager Karen Leahy stating that she was finalizing the 2007 values for MAWC and wondered if the recent MACRS implementation for personal property would affect utilities, especially for the non-parcel real estate (distribution) asset values. Ms. Frost asked, "Will we use the same depreciation as last year for all 2006 additions? Please advise."[22]

17. Ms. Leahy responded to Ms. Frost that, "If you have depreciated the locally assessed personal property items in the past using our depreciation schedules, I see no reason why the 06 acquisitions shouldn't be depreciated using the new recovery schedules. This would seem consistent with how we have been doing it. I have used the

[19] Tr. 179-180. Ex. 13.
[20] Ex. 12, 9-10., Ex. 13.
[21] Other companies with distributable property are assessed at the state level, not locally. Tr. 177-178.
[22] Ex. 2, Schedule 4.

existing schedules to locally assess the railroads and other utility companies that report to us also, and will apply the 06 rates."[23]

18. Despite the March 19, 2007 email conversation, prior to 2017, Sansone would self-report MAWC's property declarations to STLCO based on a 7-year recovery period. For the other 23 Missouri counties in which it operates, MAWC has been submitting its property declarations based on a 20-year recovery period.[24]

19. Through an oversight by STLCO - based on its reliance on MAWC's self-reporting - prior to 2017, STLCO accepted MAWC's property declarations and calculations for assessed value that used a 7-year recovery period.[25] STLCO failed to double check the property tax declaration for MAWC.[26]

20. After Ms. Strain's discovery of MAWC's error in 2017, she emailed Ms. Frost on May 30, 2017, advising her that while the 7-year recovery period was accepted by STLCO in the past, a 20-year recovery period should be used for the assessment of assets used in the gathering, treatment and distribution of water.[27]

21. No explanation was offered as to why the Company chose to use a 7-year recovery period to report its property assessments to STLCO. Neither of MAWC's two witnesses at hearing had knowledge of what conversations may have previously occurred between MAWC's representatives and STLCO about the use of a 7-year recovery period instead of a 20-year recovery period.[28]

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[23] Ex. 2, Schedule 4.
[24] Ex. 3. Ex. 12, Q.9-10.
[25] Ex. 12, Ex. 14. Tr. 200-202.
[26] Tr. 180-181.
[27] Ex. 14.
[28] Tr. 42-43, Mr. Wilde is employed by Missouri-American Services Company as Senior Director of Corporate Tax, but has only been in his current position for a year and a half. Ex. 1, Tr. 35, 43, 80-81.

22. On May 31, 2017, Ms. Frost informed Ms. Arriaga with American Water Services about her conversation with Ms. Strain. Ms. Frost wrote to Ms. Arriaga, "We have discussed frequently of [sic] Missouri's implementation of MACRS depreciation schedules (statewide) for the valuation of personal property and the potential impact should that occur fully in St. Louis County. As a reminder, some counties phased this in over a period of years to combine with their existing County schedules, while some converted later such as Jefferson County a couple of years ago."[29]

23. Unrelated to the events in STLCO, MAWC was also notified that beginning in 2017, Platte Co intends to assess Company property using a 50-year MACRS class life and include Construction Work in Progress ("CWIP") when calculating MAWC's property tax.[30] Platte Co's attempt to use a 50-year life for some of MAWC's property is unprecedented in Missouri.[31]

24. Although MAWC is assessed for its CWIP balance by STLCO, Platte Co has not previously included CWIP in its property assessments.[32] MAWC's Parkville water treatment plant, located in Platte Co, is currently under construction and will be placed in service by the end of 2017. The CWIP for the Parkville water treatment plant is estimated to be approximately $30 million dollars for 2017.[33]

25. MAWC anticipates the increased property taxes in STLCO to be $4.4 million for calendar year 2017 and approximately $2.5 million for the first five months of 2018.[34] For Platte Co, MAWC anticipates increased property taxes of approximately $400,000

[29] Ex. 15.
[30] Tr. 92.
[31] Ex. 6, p.7.
[32] Ex. 6, p. 7.
[33] Tr. 95-97.
[34] Ex. 5, Schedule 1.

for 2017 and approximately $167,000 for 2018 through May 2018.[35] The combined additional property taxes to the Counties for the seventeen months at issue amounts to approximately 9.6% of the Company's 2016 net income.[36]

26. During a general rate case proceeding, the Commission normally incorporates property tax expense when calculating a utility's revenue requirement.[37] An annualized amount of taxes are then included in the rates that are paid by MAWC's customers.[38] In MAWC's most recent general rate case, File No. WR-2015-0301, the Company's property tax expense - based on a test year ending December 31, 2014, and updated with a true-up period for known and measurable expenses through January 31, 2016 - was used for rate setting purposes.[39]

27. For MAWC's currently pending general rate case,[40] MAWC is projecting their property tax expenses for STLCO using a 20-year assessment.[41] A final Commission order in MAWC's pending general rate case is anticipated to go into effect no later than May 28, 2018.[42] To the extent that MAWC incurs an increase in its property taxes, those increases are passed on to customers.[43]

28. If MAWC had begun in 2007 to use the 20-year recovery period for calculating its STLCO property taxes it would not be facing this change in 2017.[44]

29. Increases in property taxes are not unusual or nonrecurring.[45]

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[35] Tr. 96-97. The 2016 MAWC Net Income in PSC Annual Report page F-13 is $47,826,578, Ex. 5, Schedule 1.
[36] Ex. 1, p. 10.
[37] Tr. 131.
[38] Tr. 81-82,83.
[39] EFIS Item No. 1, Application, ¶ 7, File No. WR-2015-0301,Order Granting Staff's Motion for Test Year.
[40] File No. WR-2017-0285, et al.
[41] Tr. 81-82.
[42] See File No. WR-2017-0285, et al.
[43] Tr. 81-83.
[44] Tr. 82.

30. MAWC evaluated if there were grounds to legally challenge STLCO's method of arriving at true value when assessing MAWC's property. MAWC determined that given the facts and circumstances, since the Company would bear the burden of proof in any challenge of STLCO's assessment, it would not pursue a challenge.[46]

31. At the time of hearing, MAWC was challenging Platte Co's assessment with the State Tax Commission.[47] However, as MAWC's witness Mr. Wilde acknowledged, while the statute may give guidance on the use of MACRS, county assessors have some discretion to use a different method when trying to accurately determine true value.[48]

32. When evaluating a company's financial position at a certain point in time, all relevant factors should be taken into account. While MAWC's property tax expenses have increased since 2015, other costs have likely decreased.[49]

33. No company has made a claim requesting special accounting treatment related to the statutory change in the depreciation allowance since 2007.[50]

34. A regulatory asset is a subcategory of potential deferred debits. While for electric and gas utilities there is a specific account to book regulatory assets, for water utilities, a deferral, even of a regulatory asset, can be booked to Account 186, miscellaneous deferred debits, in the appropriate Uniform System of Accounts.[51]

35. For accounting purposes, while the FERC and NARUC Uniform System of Accounts may differ slightly in describing Extraordinary Items, the consistent meaning

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[45] Tr. 162.
[46] Tr. 68-69.
[47] Tr. 69-70.
[48] Tr. 65.
[49] Tr. 154.
[50] Tr 130.
[51] Tr. 105.

for both is that an "extraordinary item" is an event that is considered unique, unusual, and nonrecurring.[52]

Conclusions of Law

As a "water corporation" and "public utility," MAWC is subject to the jurisdiction of the Commission.[53] As a regulated utility, MAWC must submit periodic reporting of its financial information to the Commission.[54] This "regulatory reporting" allows the Commission to use its knowledge and expertise to review the content and format of financial information in order to set utility rates and effectively perform its other regulatory functions under Chapters 386 and 393 of the Revised Statutes of Missouri.[55]

Section 393.140(4) grants the Commission the power to prescribe uniform methods by which regulated water corporations keep accounts, records, and books. The Commission exercised that authority through its adoption of the July 1976 revised Uniform System of Accounts for Class A Water Companies, issued by the National Association of Regulatory Utility Commissioners ("NARUC USOA").[56] MAWC must comply with the requirements of NARUC USOA when reporting its accounts and records to the Commission.[57] However, after a hearing, the Commission can change

[52] Tr. 139-140.
[53] Section 386.020, RSMo.
[54] Ex. 7, p 2, Section 393.140(4), RSMo.
[55] Ex. 6. p 2-3. "The public service commission… and its powers are referable to the police power of the state….It has a staff of technical and professional experts to aid it in the accomplish of its statutory powers…."*State ex rel. Union Elec Co. v. Public Service Com'n of State of Mo.*, 765 S.W.2d 618, 621-622 (Mo.App. W.D. 1988) quoting *Chicago, Rock Island & Pacific Railroad Company v. Public Service Commission*, 312 S.W.2d 791, 796 (Mo. banc 1958).
[56] 4 CSR 240-50.030(1). "Class A" is to be used by water companies with annual water operating revenues of $500,000 or more, which includes MAWC. 4 CSR 240-50.030(2).
[57] 4 CSR 240-50.030.

the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited.[58]

MAWC's Application requests the Commission allow the Company to record as a deferred debit the increase in the Counties' property tax assessments for 2017 and the first five months of 2018.[59]

Among other debits, NARUC USOA Account 186. Miscellaneous Deferred Debits can be used for "unusual or extraordinary expenses, not included in other accounts." General Instruction No. 7 of NARUC USOA specifically states:

> It is the intent that net income shall reflect all items of profit and loss during the period with the sole exception of prior period adjustments as described in General Instruction 8. Those items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company shall be considered extraordinary items. Commission approval must be obtained to treat an item as extraordinary. Such request must be accompanied by complete detailed information.

An AAO is a deferral mechanism that allows a utility to "defer and capitalize certain expenses until it files its next rate case."[60] An AAO is not a rate-making decision.[61] Although an AAO allows a cost to be placed in a separate account for future consideration, it does not create an expectation of recovery, nor does it bind the Commission to any particular ratemaking treatment.[62] When evaluating whether an event should be considered extraordinary, the Commission will look to the appropriate

[58] Section 393.140(8).
[59] Although the Application originally requested the ability to record the cost as a regulatory asset, NARUC USOA, unlike the USOS for other regulated utilities, does not specify an account for booking "regulatory assets." A "regulatory asset" is a subcategory of deferred debits. Tr. p. 105.
[60] *Mo. Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 436 (Mo.App W.D. 1998).
[61] *Id* at 438.
[62] *Id*.

Uniform System of Accounts for guidance.[63] However, for accounting purposes, the consistent meaning of an extraordinary item is an event that is considered unique, unusual and nonrecurring.[64]

Decision

Property taxes are an expected cost of operating a business in the State of Missouri. It is an obligation borne by all investor-owned utilities, including MAWC, which pays property taxes to each of the 24 Missouri counties in which it operates. The Commission does not dispute that a property tax payment is consistently considered a prudent operating expense subject to ratemaking treatment during a general rate case.

However, the issue before the Commission is not whether it is prudent to pay property taxes. The issue is whether the increase in MAWC's property taxes to the Counties for 2017 and the beginning of 2018 resulted from an event that would be considered "unusual" or "extraordinary" under NARUC USOA. That is to say, did the Counties' implementation of a different standard for assessing MAWC's property taxes cause an unusual, unique and nonrecurring event worthy of exceptional treatment? For the following reasons, the Commission finds they do not.

There is nothing unusual or extraordinary about paying property taxes to warrant an AAO. It is a recurring expense. MAWC counters that while the duty to pay property tax is not unusual, the level of increase in property tax and the actions by the Counties are the nonrecurring, unusual, and unique events.

[63] *Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. V. Pub. Serv. Comm'n*, 509, S.W.3d 757, 769-770 (Mo.App. W.D. 2016).
[64] Tr. 139-140.

In the Application, MAWC claims that at the time of its last rate case, File No. WR-2015-0301[65] the Company, "had no reason to believe that its property tax expenses would suddenly increase significantly beyond…current rates because of St. Louis County and Platte County unexpectedly making administrative changes in how they assess the Company's property."[66] At hearing, counsel for MAWC stated that the Counties' actions were unpredictable since MAWC, "had no advance notice of these decisions until after they were made and, in fact, after they had filed their property tax declaration in both these counties."[67]

If true, this could potentially demonstrate an unexpected event. However, insofar as STLCO is concerned, credible evidence presented at hearing shows MAWC was notified as early as 2007 that an updated class life should be used to calculate property taxes for STLCO. Furthermore, those responsible for reviewing and filing the Company's property tax declarations for STLCO were cognizant that a correction by STLCO was inevitable.

In 2007, Ms. Frost from Sansone asked STCLO if MAWC should continue using the same depreciation as last year. As Ms. Strain testified, prior to 2007, STLCO used a 7-year recovery period to calculate depreciation. STLCO responded that acquisitions should use the new recovery schedules. In a May 31, 2017 email to Ms. Arriaga with American Water Services Company, Ms. Frost states:

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[65] File No. WR-2015-0301, In the Matter of Missouri-American Water Company's Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Area, MAWC submitted a Notice of Intended Case Filing on May 15, 2015, and the Commission issued its Report and Order on May 26, 2016, with a June 25, 2016 effective date. In a December 28, 2015 order, the Commission established a Test Year for the 12 months ending December 31, 2014, with a true-up period through January 31, 2016.
[66] Application, ¶ 7; EFIS Item No. 1.
[67] Tr. 9, 11-22.

> "We have discussed frequently of [sic] Missouri's implementation of MACRS depreciation schedules (statewide) for the valuation of personal property and the potential impact should that occur fully in St. Louis County. As a reminder, some counties phased this in over a period of years to combine with their existing County schedules, while some converted later such as Jefferson County a couple of years ago."[68]

This email between MAWC's property tax consultant and the manager of the general tax group for the American Water Service Company demonstrates frequent prior conversations between the two about the potential impact of the use of the MACRS depreciation schedules by STLCO. At the very least, American Water Service Company, MAWC's affiliate responsible for managing its property tax filing, was aware that Jefferson County made the transition to the 20-year recovery period years before the May 31, 2017 email.[69] This should have put the Company on notice that the only remaining county, STLCO, could foreseeably apply the 20-year recovery period.

These prior discussions about the impact of STLCO's use of MACRS; the fact that 23 of 24 Missouri counties were already using MACRS and the 20-year recovery period; and, the fact that Jefferson County made the transition two years prior, refutes MAWC's contention that the Company had no reason to believe, "its property tax expenses would suddenly increase." MAWC's payment of property taxes based on a 20-year recovery period in the 23 other counties in which it operates shows that STLCO's actions were not unique or unusual.

[68] Ex. 15.
[69] Tr. 75, ln 4-13; Ex. 15; Ex. 3.

Some may argue that absent the Company timing the filing of a general rate case to include a known increase of property taxes, MAWC will unfairly incur an additional cost that it cannot recover in rates. While this is true, there are always increases and off-setting decreases in other costs that are not reflected in current rates. That is why the General Instructions for NARUC USOA indicates the intent should be for net income to reflect all items of profit and loss during the period.[70] MAWC is requesting the Commission single out one increased expense for special deferred treatment without consideration for other items of profit or loss. This Commission recently denied Kansas City Power & Light Company's request to do that exact thing with a tracker for increased property tax expense.[71]

When KCP&L appealed, the Court upheld the Commission's decision.[72] Pointing out that a tracker is similar to an AAO in that it allows a utility to deviate from the normal method of accounting, the Court found the Commission appropriately determined the use of trackers should be limited since they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentive for a utility to operate efficiently.[73]

Furthermore, if, as MAWC claims, the Counties' change in the methodologies used for assessing property taxes and the level of the increase are the extraordinary events that justify a deferred debit, MAWC could have requested an AAO when the other 23 counties in which it operates converted to a 20-year recovery period. Either MAWC did not consider the conversions extraordinary or the Company incorporated the

[70] NARUC USOA, General Instruction No. 7.
[71] *Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. V. Pub. Serv. Comm'n*, 509, S.W.3d 757 (Mo.App. W.D. 2016).
[72] *Id* at 769-770 (Mo.App. W.D. 2016).
[73] *Id.*

changes when it filed its general rate cases. Indeed, since December 2006, MAWC has filed five general rate cases with the Commission.[74]

Moreover, while STLCO may have informed MAWC in 2017 to begin applying the 20-year recovery period, this was not the application of a new methodology. It was STLCO correcting an error on MAWC's part and an oversight on STLCO's part about which MAWC should have reasonably been on notice since 2007.

While the Commission does not think MAWC intentionally tried to underpay STLCO, it failed to present a clear picture of what actually transpired. As the applicant seeking a deviation from the standard, MAWC bears the burden of proof.[75] Yet MAWC chose to present only two witnesses at hearing and neither of those witnesses could explain why, for the past ten years, the Company continued to apply a 7-year recovery period in STLCO for property routinely assessed with a 20-year recovery period by the other 23 Missouri counties. STLCO's participation and the helpful testimony of Ms. Strain provided many of the facts surrounding MAWC's past property tax declarations. Ms. Strain testified that MAWC did not clearly mark the depreciation percentage it applied when calculating its assessment rates. Ms. Strain testified that the only other utility comparable to MAWC's distributable property was Laclede Gas Company, which self-reported using the 20-year recovery period.

From the evidence presented by STLCO, it appears the Company's representative with first-hand knowledge of the past events and communications with Sansone concerning the use of a 7-year recovery period is the current manager of the

[74] See File Nos. WR-2007-0216, WR-2008-0311, WR-2010-0131, WR-2015-0301, and WR-2017-0285, et al.
[75] "The general standard of proof for civil cases is preponderance of the evidence." *Bonney v. Environmental Engineering, Inc*., 224 S.W.3d 109, 120 (Mo. App. 2007).

general tax group for American Water Services Company, Ms. Arriaga, but she was not presented as a witness.

While Platte Co's use of a 50-year class life may be unexpected, MAWC's own witness Mr. Wilde acknowledged that assessors are statutorily given latitude to apply a different standard if it more accurately represents the true value of property. Indeed, increases in property taxes are not unusual; they are expected. The assessment of CWIP may be new for Platte Co, but it is not unusual. Although Platte Co did not include CWIP in its prior assessments, MAWC is currently assessed for CWIP by STLCO.

Although MAWC may argue the combined level of increase in property tax expense for STLCO and Platte Co should be considered extraordinary, for reasons previously explained, the Company should have known about the potential increase in STLCO since 2007 and acted accordingly. The level of increase for Platte Co for the seventeen months at issue amounts to approximately $560,000, which is hardly extraordinary for a utility the size of MAWC.

Applying the facts to the pertinent law, the Commission finds that MAWC did not meet the standards for granting an AAO and will deny the Application.

THE COMMISSION ORDERS THAT:

1. The application for an Accounting Authority Order filed by Missouri-American Water Company is denied.

2. This order shall become effective December 30, 2017.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, and Coleman, CC., concur,
Kenney, and Rupp, CC., dissent;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 20th day of December, 2017.

DIGEST OF REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF THE

STATE OF MISSOURI

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§4. Jurisdiction and powers of the State Commission

MAWC must comply with the requirements of NARUC USOA when reporting its accounts and records to the Commission. However, after a hearing, the Commission can change the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited. Citing 4 CSR 240-50.030 and Section 393.140(8).

§8. Uniform accounts and rules

The Commission can "prescribe uniform methods of keeping accounts, records and books, to be observed by . . . water corporations[.]" The Commission can also, "after hearing, . . . prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited." Water corporations must use the Uniform System of Accounts (USoA) issued by the National Association of Regulatory Utility Commissioners (NARUC) in 1973 and revised in July 1976.

§9. Methods of accounting generally

The costs for the lead service line replacement are material, unusual and infrequent and, therefore, extraordinary. Thus, those costs meet the traditional standard the Commission has applied in deciding accounting authority order cases. This material and extraordinary LSLR Program is appropriate for an AAO.

§9. Methods of accounting generally
MAWC must comply with the requirements of NARUC USOA when reporting its accounts and records to the Commission. However, after a hearing, the Commission can change the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited. Citing 4 CSR 240-50.030 and Section 393.140(8).

§9. Methods of accounting generally
MAWC must comply with the requirements of NARUC USOA when reporting its accounts and records to the Commission. However, after a hearing, the Commission can change the prescribed accounts in which particular outlays and receipts shall be entered, charged, or credited. Citing 4 CSR 240-50.030 and Section 393.140(8).

§38. Taxes
Summary: A Company did not meet the standards for an AAO permitting it to record a property tax increase as a deferred debt where the increase occurred because a county changed from a 7-year recovery period to a 20-year recovery period. The change and resulting tax increase were not "extraordinary" events, i.e., nonrecurring, unusual or unique events. The Company had been notified 10 years before that an updated class life should used to calculate property taxes. Those responsible for reviewing the Company's property tax declarations were cognizant a recovery period change was inevitable. Twenty-three of 24 Missouri counties had started using the 20-year recovery period, and the Company could have requested an AAO when that occurred if it thought the change was extraordinary. The recovery period change from 7 years to 20 years did not result from a new methodology, but from a Company error the county previously allowed through an oversight, but then corrected. The increase was no surprise to the Company. Finally, an AAO would violate the "matching principle."

§42. Accounting Authority Orders

Summary: A Company did not meet the standards for an AAO permitting it to record a property tax increase as a deferred debt where the increase occurred because a county changed from a 7-year recovery period to a 20-year recovery period. The change and resulting tax increase were not "extraordinary" events, i.e., nonrecurring, unusual or unique events. The Company had been notified 10 years before that an updated class life should be used to calculate property taxes. Those responsible for reviewing the Company's property tax declarations were cognizant a recovery period change was inevitable. Twenty-three of 24 Missouri counties had started using the 20-year recovery period, and the Company could have requested an AAO when that occurred if it thought the change was extraordinary. The recovery period change from 7 years to 20 years did not result from a new methodology, but from a Company error the county previously allowed through an oversight, but then corrected. The increase was no surprise to the Company. Finally, an AAO would violate the "matching principle."

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The Commission found that it must follow the direction of a court of appeals in finding the company did not meet its burden of proof to be granted a Certificate of Convenience and Necessity by not providing evidence of compliance with county approval to erect light or electric poles.

§21. Grant or refusal of certificate generally

The Commission found that Missouri-American Water Company's request for authority to own and operate a water and sewer system in and around the Village of Wardsville, Missouri, is necessary or convenient for the public service subject to certain conditions and requirements.

§21. Grant or refusal of certificate generally

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." 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. Citing Section 393.170.3, RSMo 2000; and *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).

§21. Grant or refusal of certificate generally

The Commission 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.

§22. Restrictions and conditions
The Commission found that Missouri-American Water Company's request for authority to own and operate a water and sewer system in and around the Village of Wardsville, Missouri, is necessary or convenient for the public service subject to certain conditions and requirements.

§29. Unauthorized operation or construction
Kansas City Power and Light Company admitted that it served and billed customers for electric service that were located in KCP&L Greater Missouri Operations Company's certificated area and in an uncertificated area outside the boundary of Kansas City Power and Light Company's certificated service area without specific Commission authority.

§30. Municipal or county action
County commission approval to erect light or electric poles must take place before the Commission can order the granting of a Certificate of Convenience and Necessity in cases necessitating county assent for the installation of light or electric poles, as directed by a court of appeals.

§34. Public convenience and necessity or public benefit
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."

§45. Water
The Commission granted the application for a water company to acquire and operate the assets of a municipal water and sewer utility subject to certain conditions and requirements.

§45. Water
Granting a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§47. Sewers
Granting a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§47. Sewers
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."

§52. Transfer, mortgage or lease generally
In a case involving the transfer of water and sewer systems, the granting of a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§52. Transfer, mortgage or lease generally
Section 393.190.1, RSMo 2016, requires water and sewer corporations obtain the Commission's approval before mortgaging or otherwise encumbering the whole or part of a franchise, works, or systems. The Commission determines that it is not detrimental to the public interest for Elm Hills to borrow up to $1,250,000 in secured indebtedness, for the purposes specified by Elm Hills. Elm Hills and MO Utilities indicate in the *Application* that the proposed financing transactions will have no material impact on the tax revenues of the political subdivisions in which any of the structures, facilities or equipment of the companies involved are located.

§63. Penalties
Summary of Holding: The Commission did not decide whether a payment made under an agreement is a statutory penalty per se as described in Section 386.570, RSMo. It held, however, that when such a payment is made per agreement in recognition that one may not do something with impunity, then the public policy expressed in Section 385.600, RSMo, and Article IX, Section 7 of the Missouri Constitution to ensure a source of funding for public schools is implicated, and such payment should be made to the public schools.

§63. Penalties
Both Section 386.600, RSMo and Article IX, Section 7, of the Missouri Constitution designate the public school fund as the recipient of penalties and forfeitures collected on behalf of the state. This is a clear expression by lawmakers of this state's public policy to ensure a source of funding for the public schools. Citing *In re Rahn's Estate*, 291 S.W. 120, 123 (Mo. 1927) (Describing an act as being against public policy if it contravenes a well-defined expression of the settled will of the people, which expression must be looked for in the Constitution, statutes, or judicial decisions of the state.)

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DEPRECIATION

No headnotes in this volume involved the question of depreciation.

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DISCRIMINATION

§11. Inequality of rates

The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

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ELECTRIC

§2. Obligation of the utility

The Commission determined that a utility does not have an obligation to continue service in lieu of payment when proper notices of disconnection are made. The Commission also determined that a utility does not have an obligation to re-connect service when an outstanding past-due amount is owed, nor when the homeowner refuses a city ordinance required wiring inspection.

§3. Certificate of convenience and necessity
County commission approval to erect light or electric poles must take place before the Commission can order the granting of a Certificate of Convenience and Necessity in cases necessitating county assent for the installation of light or electric poles, as directed by a court of appeals.

§3. Certificate of convenience and necessity
The Commission approved a stipulation granting Kansas City Power and Light Company a certificate of convenience and necessity to provide electric service in Johnson and Pettis Counties as an extension of its certificated area.

§4. Transfer, lease and sale
The Holding: The Commission has jurisdiction over a Kansas utility's acquisition by an unregulated Missouri holding company where the Commission's approval of such an acquisition was a condition of an agreement approved in a prior proceeding which, in the first instance, had also allowed the creation of the holding company.

§4.1. Change of suppliers
The Commission weighed 10 factors in a balancing test, on a case-by-case analysis, to determine "public interest" for a change of supplier. Change of an electric supplier is restricted to provide assurance to the utility that money spent on facilities to serve a customer is not wasted absent a compelling reason. Basing a change of supplier request on the difference in the amounts charged is a prohibited reason by statute to change electric suppliers.

§6. Territorial agreements
The Commission found that the amendment to the previously approved territorial agreement, which modified the previous agreement by extending the term for an additional five years was in the public interest.

§7. Jurisdiction and powers generally
The Holding: The Commission has jurisdiction over a Kansas utility's acquisition by an unregulated Missouri holding company where the Commission's approval of such an acquisition was a condition of an agreement approved in a prior proceeding which, in the first instance, had also allowed the creation of the holding company.

§9. Jurisdiction and powers of the State Commission
Sections 394.312 and 416.041, RSMo, give the Commission jurisdiction over territorial agreements between electric utilities and municipally owned electric utilities.

§9. Jurisdiction and powers of the State Commission
The Holding: The Commission has jurisdiction over a Kansas utility's acquisition by an unregulated Missouri holding company where the Commission's approval of such an acquisition was a condition of an agreement approved in a prior proceeding which, in the first instance, had also allowed the creation of the holding company.

§9. Jurisdiction and powers of the State Commission
The Commission found that it did not have statutory authority to regulate electric vehicle charging stations, and directed the company to file an amended tariff designating electricity for electric vehicle charging as not constituting the sale for resale of electricity.

§9. Jurisdiction and powers of the State Commission
The Commission finds that electric vehicle ("EV") charging stations are not "electric plant" as defined in the statute because they are not used for furnishing electricity for light, heat, or power. EV charging stations are facilities that use specialized equipment, such as a specific cord and vehicle connector, to provide the service of charging a battery in an electric vehicle.

§2. Jurisdiction and powers of the State Commission
The Commission found that it must follow the direction of a court of appeals in finding the company did not meet its burden of proof to be granted a Certificate of Convenience and Necessity by not providing evidence of compliance with county approval to erect light or electric poles.

§11. Territorial agreements
The Commission found that it had jurisdiction to approve the extension of a territorial agreement between an electric cooperative and a municipally owned utility pursuant to subsection 394.312.3, RSMo.

§18. Depreciation
Depreciation refers to the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of utility plant in the course of service from causes that can be reasonably anticipated or contemplated, against which the company is not protected by insurance.

§18. Depreciation
Net salvage is a component in calculating depreciation that represents the value of equipment and materials recovered during retirements, net of the cost of removing them. Gross salvage is the amount recorded for the property retired due to the sale, reimbursement, or reuse of the property. Cost of removal is the cost incurred in connection with the retirement from service, and the disposition of, depreciable plant. Terminal net salvage is the ultimate retirement of plant facilities, including associated gross salvage and cost of removal.

§18. Depreciation
Terminal net salvage should not be included in depreciation rates because the actual cost KCPL will incur is unknown, cannot be measured, and is speculative. The Commission has previously excluded terminal net salvage from rates for exactly that reason.

§19. Discrimination
The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

§20. Rates
A fuel adjustment clause ("FAC") is a mechanism established in a general rate case that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs. KCPL's fuel and transportation costs are of such a magnitude that they would materially impact the utility, that those fuel costs are beyond the control of KCPL's management, and that its fuel costs are volatile.

§20. Rates
Class cost of service is often considered but a starting point in quantifying what part of the revenue responsibility is afforded to each customer class. Just because a company derives a higher rate of return from one class than another does not necessarily render those rates unjust or unreasonable.

§29. Rate of return
Financial analysts use variations on three generally accepted methods to estimate a company's fair rate of return on equity. The Discounted Cash Flow ("DCF") method is based on a theory that a stock's current price represents the present value of all expected future cash flows. The Risk Premium method is based on the principle that investors require a higher return to assume a greater risk. The Capital Asset Pricing Method ("CAPM") assumes the investor's required rate of return on equity is equal to a risk-free rate of interest plus the product of a company-specific risk factor, beta, and the expected risk premium on the market portfolio. No one method is any more correct than any other method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.

§31.1. Generation planning

In 2009, the General Assembly enacted SB376, codified as Section 393.1075. This legislation, known as the Missouri Energy Efficiency Investment Act ("MEEIA"), sought to eliminate any disincentives associated with the utility offering energy efficiency programs. MEEIA and Commission rules sought to eliminate this disincentive by allowing the utility to recover three things: (1) the energy efficiency program costs; (2) lost revenues associated with the energy efficiency programs; and (3) earnings opportunities associated with lost investment in future generation assets.

§41. Billing practices

The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

§45.1. Electric vehicle charging stations

The Commission found that it did not have statutory authority to regulate electric vehicle charging stations, and directed the company to file an amended tariff designating electricity for electric vehicle charging as not constituting the sale for resale of electricity.

EVIDENCE, PRACTICE AND PROCEDURE

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EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

The Holding: The Commission has jurisdiction over a Kansas utility's acquisition by an unregulated Missouri holding company where the Commission's approval of such an acquisition was a condition of an agreement approved in a prior proceeding which, in the first instance, had also allowed the creation of the holding company.

§2. Jurisdiction and powers
The Commission is an agency created by the legislature. It possesses only those powers expressly granted or necessarily implied by statute. Citing Section 386.010, RSMo, and *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. banc 1943).

The Commission's jurisdiction cannot exceed what is statutorily authorized and subject matter jurisdiction cannot be conferred by consent or agreement of the parties. The inclusion of a condition in an agreement does not in and of itself create within the Commission enforcement authority. Citing *State Tax Com'n v. Administrative Hearing Com'n*, 641 S.W.2d 69 (Mo. 1982); and *Livingston Manor, Inc. v. Department of Social Services*, 809 S.W.2d 153, 156 (Mo.App. W.D. 1991).

§2. Jurisdiction and powers
The Commission cannot enforce, construe or annul contracts, nor can it declare or enforce principles of law or equity. However, the "Commission is entitled to interpret its own orders and to ascribe to them a proper meaning and, in so doing, the Commission does not act judicially but as a fact-finding agency." Citing *Wilshire Const. Co. v. Union Elec. Co.Comm'n,* , 463 S.W.2d 903, 905 (Mo. 1971);259 S.W.3d 544, 547 (Mo. App. 2008); *State ex rel. Cass County v. Pub. Serv. State ex rel. Beaufort Transfer Co. v. Public Service Commission of Missouri,* 610 S.W.2d 96, 100 (Mo. App. 1980).

§3. Judicial notice; matters outside the record
The Commission determined that the Office of the Public Counsel's motion to strike portions of the Company's brief containing citations and excerpts of arguments from other

Commission cases on appeal to the Western District Court

of Appeals and the Missouri Supreme Court was moot because the Commission could have taken administrative notice of the records and the Commission did not rely on those arguments in making its decision.

§5. Admissibility

Ordinarily, unsworn statements by counsel are not evidence of the facts asserted, unless the facts are conceded to be true by other parties. Citing *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo.App. S.D. 1997). But where the parties are disputing the terms of a settlement agreement, the statements by counsel regarding the meaning of the "Prospective Merger Conditions" section of the agreement and why it was included in the agreement establishes the intent of the parties when drafting the agreement. No citation.

§6. Weight, effect and sufficiency

Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony". Citing State ex rel. Pub. Counsel v. Mo. Pub. Serv. Comm'n, 289 S.W.3d 240, 247 (Mo. App. 2009).

§7. Competency

Ordinarily, unsworn statements by counsel are not evidence of the facts asserted, unless the facts are conceded to be true by other parties. Citing *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo.App. S.D. 1997). But where the parties are disputing the terms of a settlement agreement, the statements by counsel regarding the meaning of the "Prospective Merger Conditions" section of the agreement and why it was included in the agreement establishes the intent of the parties when drafting the agreement. No citation.

§8. Stipulation
Ordinarily, unsworn statements by counsel are not evidence of the facts asserted, unless the facts are conceded to be true by other parties. Citing *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo.App. S.D. 1997). But where the parties are disputing the terms of a settlement agreement, the statements by counsel regarding the meaning of the "Prospective Merger Conditions" section of the agreement and why it was included in the agreement establishes the intent of the parties when drafting the agreement. No citation.

§8. Stipulation
At the time of the 2001 Agreement, the Commission and the parties relied on KCPL's and GPE's assurances that Section 7 [of the Stipulation] authorized the Commission's oversight over the future holding company. The Commission ordered the parties to comply with the terms of the agreement. Were the Commission to agree with GPE's analysis, it would render the terms of a negotiated stipulation and agreement meaningless and unenforceable; a result that should be avoided. For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation.

§8. Stipulation
The Commission approved a stipulation and agreement to resolve the complaint regarding operation of the Allconnect Program whereby the utilities agreed to pay $50,000 to the Public School Fund of the State of Missouri.

§8. Stipulation

The Commission approved the unanimous stipulation of Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, the Staff of the Missouri Public Commission, and the Office of the Public Counsel.

§9. Particular kinds of evidence generally

The Commission cannot enforce, construe or annul contracts, nor can it declare or enforce principles of law or equity. However, the "Commission is entitled to interpret its own orders and to ascribe to them a proper meaning and, in so doing, the Commission does not act judicially but as a fact-finding agency." Citing *Wilshire Const. Co. v. Union Elec. Co.Comm'n,* , 463 S.W.2d 903, 905 (Mo. 1971);259 S.W.3d 544, 547 (Mo. App. 2008); *State ex rel. Cass County v. Pub. Serv. State ex rel. Beaufort Transfer Co. v. Public Service Commission of Missouri,* 610 S.W.2d 96, 100 (Mo. App. 1980).

§10. Admissions

Ordinarily, unsworn statements by counsel are not evidence of the facts asserted, unless the facts are conceded to be true by other parties. Citing *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo.App. S.D. 1997). But where the parties are disputing the terms of a settlement agreement, the statements by counsel regarding the meaning of the "Prospective Merger Conditions" section of the agreement and why it was included in the agreement establishes the intent of the parties when drafting the agreement. No citation.

§10. Admissions

At the time of the 2001 Agreement, the Commission and the parties relied on KCPL's and GPE's assurances that Section 7 [of the Stipulation] authorized the Commission's oversight

over the future holding company. The Commission ordered the parties to comply with the terms of the agreement. Were the Commission to agree with GPE's analysis, it would render the terms of a negotiated stipulation and agreement meaningless and unenforceable; a result that should be avoided. For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation.

§18. Record and evidence in other proceedings

In interpreting agreements which the Commission has approved, the Commission is not limited to the terms of definitions set out in Missouri statutes. Settlement agreements are not akin to rules or regulations, which routinely rely on statutes to define terms or phrases. Unless an agreement expressly defines the meaning of a term, the Commission will use the principles of contract law to interpret the agreement's meaning. Citing *Union Elec. Co. v. Dir. Of Revenue*, 425 S.W.3d 118 (Mo.banc 2014); *Withers v. City of Lake St. Louis*, 318 S.W.3d 256, 261(Mo.App. E.D. 2010).

The terms of an agreement reached by the parties should be construed to avoid a result that renders those terms meaningless. Thus, an agreement should not be construed to require of the Commission no more than what a statute already requires of the Commission.

§18. Record and evidence in other proceedings
Ordinarily, unsworn statements by counsel are not evidence of the facts asserted, unless the facts are conceded to be true by other parties. Citing *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo.App. S.D. 1997). But where the parties are disputing the terms of a settlement agreement, the statements by counsel regarding the meaning of the "Prospective Merger Conditions" section of the agreement and why it was included in the agreement establishes the intent of the parties when drafting the agreement. No citation.

§18. Record and evidence in other proceedings
At the time of the 2001 Agreement, the Commission and the parties relied on KCPL's and GPE's assurances that Section 7 [of the Stipulation] authorized the Commission's oversight over the future holding company. The Commission ordered the parties to comply with the terms of the agreement. Were the Commission to agree with GPE's analysis, it would render the terms of a negotiated stipulation and agreement meaningless and unenforceable; a result that should be avoided. For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation.

§23. Notice and hearing
The Commission must hold an evidentiary hearing to determine if a territorial agreement should be approved, except when the matter is resolved by a stipulation and agreement and all parties agree to waive their right to a hearing. Even though no formal agreement to waive the hearing was submitted, the Commission need not hold a hearing since the opportunity for a hearing was provided and no party requested an opportunity to present evidence.

§23. Notice and hearing
The Commission denied Laclede Gas Company's motion to dismiss or, in the alternative, to strike issues raised in the Office of the Public Counsel's pleading filed on the 70th day after the petition for a change in the infrastructure system replacement surcharge (ISRS) had been filed because Section 393.1015.1.(1), RSMo (Supp. 2012), did not expressly require Public Counsel's filing within a certain timeframe.

§23. Notice and hearing
It is within the Commission's discretion to hold a hearing in ISRS petitions.

§23. Notice and hearing
Appointment of interim receiver was made effective immediately to protect the public from the threat of unsafe and inadequate water service and the danger that the water system would be abandoned by its owners.

§24. Procedures, evidence and proof
Even though the procedural schedule was abbreviated, a full hearing was held and due process was served.

§30. Settlement procedures
At the time of the 2001 Agreement, the Commission and the parties relied on KCPL's and GPE's assurances that Section 7 [of the Stipulation] authorized the Commission's oversight over the future holding company. The Commission ordered the parties to comply with the terms of the agreement. Were the Commission to agree with GPE's analysis, it would render the terms of a negotiated stipulation and agreement meaningless and unenforceable; a result that should be avoided. For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation.

§30. Settlement procedures
By law, parties are authorized to enter into settlement agreements to resolve a contested case or what has the potential to become a contested case. Citing *Bodenhausen v. Missouri Bd. of Registration for Healing Arts*, 900 S.W.2d 621 (Mo. 1995).

EXPENSE

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EXPENSE

§17. Extraordinary and unusual expenses

Summary: A Company did not meet the standards for an AAO permitting it to record a property tax increase as a deferred debt where the increase occurred because a county changed from a 7-year recovery period to a 20-year recovery period. The change and resulting tax increase were not "extraordinary" events, i.e., nonrecurring, unusual or unique events. The Company had been notified 10 years before that an updated class life should be used to calculate property taxes. Those responsible for reviewing the Company's property tax declarations were cognizant a recovery period change was inevitable. Twenty-three of 24 Missouri counties had started using the 20-year recovery period, and the Company could have requested an AAO when that occurred if it thought the change was extraordinary. The recovery period change from 7 years to 20 years did not result from a new methodology, but from a Company error the county previously allowed through an oversight, but then corrected. The increase was no surprise to the Company. Finally, an AAO would violate the "matching principle."

§17. Extraordinary and unusual expenses

When evaluating whether an event should be considered extraordinary, the Commission will look to the appropriate Uniform System of Accounts for guidance. However, for accounting purposes, the consistent meaning of an extraordinary item is an event that is considered unique, unusual and nonrecurring. Citing Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. V. Pub. Serv. Comm'n, 509, S.W.3d 757, 769-770 (Mo.App. W.D. 2016).

§67. Taxes

Summary: A Company did not meet the standards for an AAO permitting it to record a property tax increase as a deferred debt where the increase occurred because a county changed from a 7-year recovery period to a 20-year recovery period. The change and resulting tax increase were not "extraordinary" events, i.e., nonrecurring, unusual or unique events. The Company had been notified 10 years before that an updated class life should be used to calculate property taxes. Those responsible for reviewing the Company's property tax declarations were cognizant a recovery period change was inevitable. Twenty-three of 24 Missouri counties had started using the 20-year recovery period, and the Company could have requested an AAO when that occurred if it thought the change was extraordinary. The recovery period change from 7 years to 20 years did not result from a new methodology, but from a Company error the county previously allowed through an oversight, but then corrected. The increase was no surprise to the Company. Finally, an AAO would violate the "matching principle."

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

The Commission found that because plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe, it was an infrastructure system replacement surcharge (ISRS) eligible expense. The Commission found that the plastic pipe was distinguishable from the costs of telemetry because telemetry was a discrete expense added for the convenience of the company.

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

The Commission found that because plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe it was an infrastructure system replacement surcharge (ISRS) eligible expense.

§79. Infrastructure system replacement surcharge (ISRS) eligible expense

The Commission found that hydrostatic testing was not an infrastructure system replacement surcharge (ISRS) eligible expense because it did not meet the definition of gas utility plant project in section 393.1009(3), RSMo (Supp. 2012).

GAS

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GAS

No headnotes in this volume involved the question of gas.

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MANUFACTURED HOUSING

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§11. Franchises
§12. Charters
§13. Acquisition of public utility property
§14. Compensation or profit
§15. Eminent domain
§16. Property sold or leased to a public utility
§17. Restrictions on service, extent of use
§18. Size of business
§19. Solicitation of business
§20. Submission to regulation
§21. Sale of surplus
§22. Use of streets or public places

IV. PARTICULAR ORGANIZATIONS-PUBLIC UTILITY CHARACTER
§23. Particular organizations generally
§24. Municipal plants

§25. Municipal districts
§26. Mutual companies; cooperatives
§27. Corporations
§28. Foreign corporations or companies
§29. Unincorporated companies
§30. State or federally owned or operated utility
§31. Trustees

PUBLIC UTILITIES

§1. Generally

The Commission established the assessment amount for fiscal year 2018.

§2. Nature of

"The public service commission… and its powers are referable to the police power of the state… It has a staff of technical and professional experts to aid it in the accomplish of its statutory powers…." Citing State ex rel. Union Elec Co. v. Public Service Com'n of State of Mo., 765 S.W.2d 618, 621-622 (Mo.App. W.D. 1988), quoting Chicago, Rock Island & Pacific Railroad Company v. Public Service Commission, 312 S.W.2d 791, 796 (Mo. Ban 1958).

§7. Jurisdiction and powers of the State Commission

The Commission is tasked with acting in the public interest. The Commission's ability to impose "reasonable and necessary" conditions on the reorganization of an electrical corporation was the Legislature's way of ensuring the Commission could accomplish that task. Citing *State ex rel. Gulf Transport Co. v. Public Service Com'n*, 658 S.W.2d 448, 456 (Mo.App. 1983).

§10. Tests in general

The Commission is tasked with acting in the public interest. The Commission's ability to impose "reasonable and necessary" conditions on the reorganization of an electrical

corporation was the Legislature's way of ensuring the Commission could accomplish that task. Citing *State ex rel. Gulf Transport Co. v. Public Service Com'n*, 658 S.W.2d 448, 456 (Mo.App. 1983).

§28. Foreign corporations or companies

The Holding: The Commission has jurisdiction over a Kansas utility's acquisition by an unregulated Missouri holding company where the Commission's approval of such an acquisition was a condition of an agreement approved in a prior proceeding which, in the first instance, had also allowed the creation of the holding company.

RATES

I. JURISDICTION AND POWERS
§1. Jurisdiction and powers generally
§2. Jurisdiction and powers of Federal Commissions
§3. Jurisdiction and powers of the State Commission
§4. Jurisdiction and powers of the courts
§5. Jurisdiction and powers of local authorities
§6. Limitations on jurisdiction and power
§7. Obligation of the utility

II. REASONABLENESS-FACTORS AFFECTING REASONABLENESS
§8. Reasonableness generally
§9. Right of utility to accept less than a reasonable rate
§10. Ability to pay
§11. Breach of contract
§12. Capitalization and security prices
§13. Character of the service
§14. Temporary or emergency
§15. Classification of customers
§16. Comparisons
§17. Competition
§18. Consolidation or sale
§19. Contract or franchise rate
§20. Costs and expenses
§21. Discrimination, partiality, or unfairness
§22. Economic conditions
§23. Efficiency of operation and management
§24. Exemptions

§25. Former rates; extent of change
§26. Future prospects
§27. Intercorporate relations
§28. Large consumption
§29. Liability of utility
§30. Location
§31. Maintenance of service
§32. Ownership of facilities
§33. Losses or profits
§34. Effects on patronage and use of the service
§35. Patron's profit from use of service
§36. Public or industrial use
§37. Refund and/or reduction
§38. Reliance on rates by patrons
§39. Restriction of service
§40. Revenues
§41. Return
§42. Seasonal or irregular use
§43. Substitute service
§44. Taxes
§45. Uniformity
§46. Value of service
§47. Value of cost of the property
§48. Violation of law or orders
§49. Voluntary rates
§50. What the traffic will bear
§51. Wishes of the utility or patrons

III. CONTRACTS AND FRANCHISES
§52. Contracts and franchises generally
§53. Validity of rate contract
§54. Filing and Commission approval
§55. Changing or terminating-contract rates
§56. Franchise or public contract rates
§57. Rates after expiration of franchise
§58. Effect of filing new rates
§59. Changes by action of the Commission
§60. Changes or termination of franchise or public contract rate
§61. Restoration after change

IV. SCHEDULES, FORMALITIES AND PROCEDURE RELATING TO
§62. Initiation of rates and rate changes
§63. Proper rates when existing rates are declared illegal
§64. Reduction of rates
§65. Refunds
§66. Filing of schedules reports and records
§67. Publication and notice
§68. Establishment of rate base

§69. Approval or rejection by the Commission
§70. Legality pending Commission action
§71. Suspension
§72. Effective date
§73. Period for which effective
§74. Retroactive rates
§75. Deviation from schedules
§76. Form and contents
§77. Billing methods and practices
§78. Optional rate schedules
§79. Test or trial rates

V. KINDS AND FORMS OF RATES AND CHARGES
§80. Kinds and forms of rates and charges in general
§81. Surcharges
§82. Uniformity of structure
§83. Cost elements involved
§84. Load, diversity and other factors
§85. Flat rates and charges
§86. Mileage **charges**
§87. Zone rates
§88. Transition from flat to meter
§89. Straight, block or step-generally
§90. Contract or franchise requirement
§91. Two-part rate combinations
§92. Charter, contract, statutory, or franchise restrictions
§93. Demand charge
§94. Initial charge
§95. M**eter rental**
§96. M**inimum bill or charge**
§97. M**aximum charge or rate**
§98. W**holesale rates**
§99. Charge when service not used; discontinuance
§100. Variable rates based on costs-generally
§101. Fuel clauses
§102. Installation, connection and disconnection charges
§103. Charges to short time users

VI. RATES AND CHARGES OF PARTICULAR UTILITIES
§104. Electric and power
§105. Demand, load and related factors
§106. Special charges; amount and computation
§107. Kinds and classes of service
§108. Gas
§109. Heating
§110. Telecommunications
§111. Water
§112. Sewers

§113. Joint Municipal Utility Commissions

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§114. Emergency and temporary rates generally
§115. What constitutes an emergency
§116. Prices
§117. Burden of proof to show emergencies

VIII. RATE DESIGN, CLASS COST OF SERVICE
§118. Method of allocating costs
§119. Rate design, class cost of service for electric utilities
§120. Rate design, class cost of service for gas utilities
§121. Rate design, class cost of service for water utilities
§122. Rate design, class cost of service for sewer utilities
§123. Rate design, class cost of service for telecommunications utilities
§124. Rate design, class cost of service for heating utilities

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RATES

§7. Obligation of the utility

The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

§81. Surcharges

The Commission found that because plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe, the cost of replacing it could be recovered in the infrastructure system replacement surcharge (ISRS).

§81. Surcharges

The Commission's decision to allow the costs of plastic pipe as part of the infrastructure system replacement surcharge (ISRS) was distinguished from the earlier Commission

decision to disallow telemetry expenses as part of the ISRS because the telemetry expenses were distinct additions to ISRS-eligible projects and were included as a matter of convenience, while the plastic pipe was an integral part of the replacement of cast iron and steel pipe that was worn out or in a deteriorated condition.

§81. Surcharges

The Commission rejected the tariff sheet filed by Laclede Gas Company to change its infrastructure replacement surcharge (ISRS), but authorized the company to file new tariff sheets to adjust the ISRS in compliance with the Commission's order.

§111. Water

In File No. WO-2015-0211, the Commission found Missouri American Water Company was eligible for an Infrastructure System Replacement Surcharge (ISRS) because the county in which it operates had one million inhabitants at the time the ISRS statute was passed. The Office of Public Counsel (OPC) appealed that decision, and the Court of Appeals found in favor of OPC in an unreported opinion. While OPC's appeal was eventually dismissed as moot by the Supreme Court of Missouri, the Commission finds the Court of Appeals' analysis, though not binding, to be instructive and persuasive. The Commission finds that the county in which MAWC operates does not have more than one million inhabitants based upon the 2010 census, as required by the currently effective Section 393.1003.1. Therefore, MAWC does not qualify for an ISRS under the express terms of Section 393.1003, and its petition must be dismissed.

SECURITY ISSUES

I. IN GENERAL

§1. Generally

§2. Obligation of the utility
§3. Authorization by a corporation
§4. Conversion, redemption and purchase by a corporation
§5. Decrease of capitalization
§6. Sinking funds
§7. Dividends
§8. Revocation and suspension of Commission authorization
§9. Fees and expenses
§10. Purchase by utility
§11. Accounting practices

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§12. Jurisdiction and powers in general
§13. Jurisdiction and powers of Federal Commissions
§14. Jurisdiction and powers of the State Commission
§15. Jurisdiction and powers of local authorities

III. NECESSITY OF AUTHORIZATION BY THE COMMISSION
§16. Necessity of authorization by the Commission generally
§17. Installment contracts
§18. Refunding or exchange of securities
§19. Securities covering utility and nonutility property
§20. Securities covering properties outside the State

IV. FACTORS AFFECTING AUTHORIZATION
§21. Factors affecting authorization generally
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§22. Equity capital
§23. Charters
§24. Competition
§25. Compliance with the terms of a mortgage or lease
§26. Definite plans and purposes
§27. Financial conditions and prospects
§28. Use of proceeds
§29. Dividends and dividend restrictions
§30. Improper practices and irregularities
§31. Intercorporate relations
§32. Necessity of issuance
§33. Revenue
§34. Rates and rate base
§35. Size of the company
§36. Title of property
§37. Amount
§38. Kind of security
§39. Restrictions imposed by the security

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§40. Purposes and subjects of capitalization generally
§41. Additions and betterments
§42. Appreciation or full plant value
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§44. Deficits and losses
§45. Depreciation funds and requirements
§46. Financing costs
§47. Intangible property
§48. Going value and good will
§49. Stock dividends
§50. Loans to affiliated interests
§51. Overhead
§52. Profits
§53. Refunding, exchange and conversion
§54. Reimbursement of treasury
§55. Renewals, replacements and reconstruction
§56. Working capital

VI. KINDS AND PROPORTIONS
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§58. Common or preferred stock
§59. Stock without par value
§60. Short term notes
§61. Proportions of stock, bonds and other security
§62. Proportion of debt to net plant

VII. SALE PRICE AND INTEREST RATES
§63. Sale price and interest rates generally
§64. Bonds
§65. Notes
§66. Stock
§67. Preferred stock
§68. No par value stock

VIII. FINANCING METHODS AND PRACTICES
§69. Financing methods and practices generally
§70. Leases
§71. Financing expense
§72. Payment for securities
§73. Prospectuses and advertising
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§75. Stipulation as to rate base

IX. PARTICULAR UTILITIES
§76. Telecommunications
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§78. Gas

§79. Sewer
§80. Water
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SECURITY ISSUES

No headnotes in this volume involved the question of security issues.

SERVICE

I. IN GENERAL
§1. Generally
§2. What constitutes adequate service
§3. Obligation of the utility
§4. Abandonment, discontinuance and refusal of service
§5. Contract, charter, franchise and ordinance provisions
§6. Restoration or continuation of service
§7. Substitution of service
§7.1. Change of suppliers
§8. Discrimination

II. JURISDICTION AND POWERS
§9. Jurisdiction and powers generally
§10. Jurisdiction and powers of the Federal Commissions
§11. Jurisdiction and powers of the State Commission
§12. Jurisdiction and powers over service outside of the state
§13. Jurisdiction and powers of the courts
§14. Jurisdiction and powers of local authorities
§15. Limitations on jurisdiction
§16. Enforcement of duty to serve

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§17. Duty to serve in general
§18. Duty to render adequate service
§19. Extent of profession of service
§20. Duty to serve as affected by contract
§21. Duty to serve as affected by charter, franchise or ordinance
§22. Duty to serve persons who are not patrons
§23. Reasons for failure or refusal to serve
§24. Duty to serve as affected by inadequate revenue

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§26. Extensions

§27. Trial or experimental operation
§28. Consent of local authorities
§29. Service area
§30. Rate of return
§31. Rules and regulations
§32. Use and ownership of property
§33. Hours of service
§34. Restriction on service
§35. Management and operation
§36. Maintenance
§37. Equipment
§38. Standard service
§39. Noncontinuous service

V. SERVICE BY PARTICULAR UTILITIES
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§41. Electric and power
§42. Heating
§43. Water
§44. Sewer
§45. Telecommunications

VI. CONNECTIONS, INSTRUMENTS AND EQUIPMENT
§46. Connections, instruments and equipment in general
§47. Duty to install, own and maintain
§48. Protection, location and liability for damage
§49. Restriction and control of connections, instruments and equipment

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SERVICE

§3. Obligation of the utility

The Commission determined that a utility does not have an obligation to continue service in lieu of payment when proper notices of disconnection are made. The Commission also determined that a utility does not have an obligation to re-connect service when an outstanding past-due amount is owed, nor when the homeowner refuses a city ordinance required wiring inspection.

§7.1. Change of supplier
The Commission weighed 10 factors in a balancing test, on a case-by-case analysis, to determine "public interest" for a change of supplier. Change of an electric supplier is restricted to provide assurance to the utility that money spent on facilities to serve a customer is not wasted absent a compelling reason. Basing a change of supplier request on the difference in the amounts charged is is a prohibited reason by statute to change electric suppliers.

§8. Discrimination
The Commission relied on Missouri statutes prohibiting a utility from charging more or less than is charged to other persons for similar services, and prohibiting any undue or unreasonable preference or advantage to any person in concluding that a utility has no fiduciary duty to provide power without payment, or to charge a lesser amount due to status as a veteran, disabled person, or impoverishment.

§17. Duty to serve in general
The Commission determined that a utility does not have an obligation to continue service in lieu of payment when proper notices of disconnection are made. The Commission also determined that a utility does not have an obligation to re-connect service when an outstanding past-due amount is owed, nor when the homeowner refuses a city ordinance required wiring inspection.

§23. Reasons for failure or refusal to serve
The Commission determined that a utility does not have an obligation to continue service in lieu of payment when proper notices of disconnection are made. The Commission also determined that a utility does not have an obligation to re-connect service when an outstanding past-due amount is owed, nor when the homeowner refuses a city ordinance required wiring inspection.

SEWER

I. IN GENERAL
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§3. Obligation of the utility
§4. Transfer, lease and sale

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§8. Jurisdiction and powers of local authorities
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§10. Operation generally
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§17. Service
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§24. Abandonment or discontinuance
§25. Reports, records and statements
§26. Financing practices
§27. Security issues
§28. Rules and regulations
§29. Billing practices
§30. Eminent domain
§31. Accounting Authority orders

SEWER

§2. Certificate of convenience and necessity

The Commission found that Missouri-American Water

Company's request for authority to own and operate a water and sewer system in and around the Village of Wardsville, Missouri, is necessary or convenient for the public service subject to certain conditions and requirements.

§2. Certificate of convenience and necessity
Granting a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§4. Transfer, lease and sale
The Commission granted the application for a water company to acquire and operate the assets of a municipal water and sewer utility subject to certain conditions and requirements.

§4. Transfer, lease and sale
In a case involving the transfer of water and sewer systems, the granting of a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

STEAM

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§3. Certificate of convenience and necessity
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§4.1. Change of suppliers
§5. Charters and franchise
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§45. Decommissioning costs

IV. RELATIONS BETWEEN CONNECTING COMPANIES
§46. Relations between connecting companies generally
§47. Physical connection
§48. Contracts
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STEAM

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V. ALTERNATIVE REGULATION AND COMPETITION
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§41. Incentive regulation plans
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§44. Network modernization
§45. Local exchange competition
§46. Interconnection Agreements
§46.1 Interconnection Agreements-Arbitrated
§47. Price Cap

TELECOMMUNICATIONS

No headnotes in this volume involved the question of telecommunications.

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§4. Obligation of the utility

II. JURISDICTION AND POWERS
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§13. Ascertainment of value generally
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§59. Factors affecting allowance
§60. Billing and payment for service
§61. Cash on hand
§62. Customers' deposit
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§64. Prepaid expenses
§65. Materials and supplies
§66. Amount to be allowed
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§68. Deprecation generally
§69. Necessity of deduction for depreciation
§70. Factors affecting propriety thereof
§71. Methods of establishing rates or amounts
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VALUATION

No headnotes in this volume involved the question of valuation.

WATER

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§4. Transfer, lease and sale
§5. Joint Municipal Utility Commissions

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§11. Territorial Agreements

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§28. Financing practices
§29. Security issues
§30. Rules and regulations
§31. Billing practices
§32. Accounting Authority Orders

WATER

§2. Certificate of convenience and necessity

The Commission found that Missouri-American Water

Company's request for authority to own and operate a water and sewer system in and around the Village of Wardsville, Missouri, is necessary or convenient for the public service subject to certain conditions and requirements.

§2. Certificate of convenience and necessity
Granting a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§2. Certificate of convenience and necessity
The Commission granted Missouri-American Water Company a certificate of convenience and necessity to provide sewer service to the Homestead Estates subdivision.

§4. Transfer, lease and sale
The Commission granted the application for a water company to acquire and operate the assets of a municipal water and sewer utility subject to certain conditions and requirements.

§4. Transfer, lease and sale
In a case involving the transfer of water and sewer systems, the granting of a certificate of convenience and necessity relies on a showing of being necessary or convenient for the public service, and the Commission applies a five factor analysis to determine whether an application is necessary or convenient.

§10. Receivership
The Commission appointed an interim receiver and authorized the Commission's General Counsel to petition the circuit court for appointment of a receiver for a water company that was unable or unwilling to provide safe and adequate service to its customers.

§11. Territorial Agreements
The Commission found that it had jurisdiction over the territorial agreement between a public water supply district and water corporation pursuant to subsection 247.172.5, RSMo.

§11. Territorial Agreements
The Commission found that the Territorial Agreement between Missouri-American Water Company and Audrain Public Water Supply District No. 1 designating exclusive service territories in Audrain County, Missouri, including within the corporate limits of the City of Mexico, Missouri, was not detrimental to the public interest with certain conditions.

§32. Accounting Authority Orders
Summary: A Company did not meet the standards for an AAO permitting it to record a property tax increase as a deferred debt where the increase occurred because a county changed from a 7-year recovery period to a 20-year recovery period. The change and resulting tax increase were not "extraordinary" events, i.e., nonrecurring, unusual or unique events. The Company had been notified 10 years before that an updated class life should be used to calculate property taxes. Those responsible for reviewing the Company's property tax declarations were cognizant a recovery period change was inevitable. Twenty-three of 24 Missouri counties had started using the 20-year recovery period, and the Company could have requested an AAO when that occurred if it thought the change was extraordinary. The recovery period change from 7 years to 20 years did not result from a new methodology, but from a Company error the county previously allowed through an oversight, but then corrected. The increase was no surprise

to the Company. Finally, an AAO would violate the "matching principle."

§32. Accounting Authority Orders

An AAO is a deferral mechanism that allows a utility to "defer and capitalize certain expenses until it files its next rate case." An AAO is not a rate-making decision. Although an AAO allows a cost to be placed in a separate account for future consideration, it does not create an expectation of recovery, nor does it bind the Commission to any particular ratemaking treatment. Citing Mo. Gas Energy v. Pub. Serv. Comm'n, 978 S.W.2d 436 (Mo.App W.D. 1998).

A tracker is similar to an AAO. The use of trackers should be limited since they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentive for a utility to operate efficiently. Citing Kan. City Power & Light Co.'s Request for Auth. To Implement a General Rate Increase for Elec. Serv. V. Pub. Serv. Comm'n, 509, S.W.3d 757 (Mo.App. W.D. 2016).

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