REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF

THE STATE OF MISSOURI

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Volume 32 MPSC 3d

January 1, 2022 – December 31, 2022

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Nancy Dippell

Reporter of Opinions

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JEFFERSON CITY, MISSOURI

(2024)

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, 2022 through December 31, 2022. It is published pursuant to the provisions of Section 386.170, et seq., Revised Statutes of Missouri, 2016, as amended.

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

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

TABLE OF CONTENTS

THE COMMISSION

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

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Maida Coleman
Glen Kolkmeyer
Scott Rupp
Jason R. Holsman

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AS OF JUNE 2024

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JOHN S. CLARK Senior Regulatory Law Judge	CHARLES HATCHER Senior Regulatory Law Judge
KENNETH J. SEYER Regulatory Law Judge	RILEY FEWELL Regulatory Law Judge

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

Morris Woodruff Ross Keeling

Reported Cases

-A-

-E-

-I-

-L-

-M-

-U-

-W-

-#-

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Motion of Lewis County Rural Electric Cooperative Association and Union Electric Company d/b/a Ameren Missouri for Approval of a First Addendum to the Parties' Territorial Agreement Designating the Boundaries of each Electric Service Supplier Within Portions of Scotland County	)))))))	**File No. EO-2022-0102**

REPORT AND ORDER APPROVING FIRST ADDENDUM TO TERRITORIAL AGREEMENT

ELECTRIC

§9. Jurisdiction and powers of the State Commission
§11. Territorial agreements
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.

§11. Territorial agreements
The Commission may approve a territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing
§24. Procedures, evidence and proof
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of January, 2022.

In the Matter of the Joint Motion of Lewis County Rural Electric Cooperative Association and Union Electric Company d/b/a Ameren Missouri for Approval of a First Addendum to the Parties' Territorial Agreement Designating the Boundaries of each Electric Service Supplier Within Portions of Scotland County	)))))))	**File No. EO-2022-0102**

REPORT AND ORDER APPROVING FIRST ADDENDUM TO TERRITORIAL AGREEMENT

Issue Date: January 12, 2022 Effective Date: February 11, 2022

This order approves the First Addendum to the Territorial Agreement (Addendum) between Lewis County Rural Electric Cooperative Association (Lewis County Co-op) and Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) (collectively, the Applicants) to incorporate into Lewis County Co-op's territory in Scotland County, Missouri a five acre parcel that is within Ameren Missouri's service territory.

Procedural History

On October 6, 2021, the Applicants filed their *Joint Motion for Approval of First Addendum* (Application). On November 19, the Applicants moved for a waiver of the notice requirements of 20 CSR 4240-4.017.1, pursuant to 20 CSR 4240-4.017.1(D), affirming that they had not had contact with the Commission about the subject to the application within 150 days before filing the application. On November 19, 2021, the Commission issued its Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation. On December 22, 2021, the Commission's Staff filed its Staff Recommendation, recommending approval of the Addendum. No persons have

sought intervention or requested a hearing, nor have the Joint Applicants responded to Staff's Recommendation.

Findings of Fact

1. Lewis County Co-op is a rural electric cooperative organized and existing under the laws of Missouri with its principal office in Lewiston, Missouri. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members in certain counties. Lewis County Co-op is in good standing under the laws of the State of Missouri.

2. Ameren Missouri is engaged in the business of providing electrical services in Missouri to customers in its service areas. Ameren Missouri is an electrical corporation and public utility as defined in Section 386.020, RSMo,[1] and is subject to the jurisdiction and supervision of the Commission as provided by law.

3. The Applicants' Territorial Agreement was approved on July 21, 2000 in File Number EO-2000-630.

4. The Addendum assigns a certain parcel of land in Scotland County, now within the exclusive service area of Ameren Missouri, to the exclusive service area of Lewis County Co-op.

5. Lewis County Co-op has existing facilities installed on the parcel identified in the Addendum capable of providing the level of electric service that is anticipated and/or requested, which would prevent an unnecessary duplication of facilities.

6. No existing customers of either Lewis County Co-op or Ameren Missouri will have their electric service changed by the proposed Addendum.

[1] All references to the Missouri Revised Statutes will be to 2016.

7. The owner of the affected area has consented to the Addendum.

8. Neither Lewis County Co-op nor Ameren Missouri had any communication with the Commission about the subject of the application within one hundred fifty days before filing the application.

Conclusions of Law

A. Lewis County Co-op is a rural electric cooperative organized under Chapter 394 RSMo, to provide electric service to its members in Missouri.

B. Ameren Missouri is a corporation providing electrical services in Missouri that is subject to the jurisdiction of the Commission per chapters 386 and 393, RSMo. [2]

C. Under Section 394.312.1, RSMo, the Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives, thus, Lewis County Co-op is subject to the Commission's jurisdiction in this case. [3]

D. Under Sections 394.312.3 and 5, RSMo, the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

E. Under Section 394.312.5, RSMo, the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

F. Commission Rule 20 CSR 4240-4.017.1 requires that any person intending to file a case before the Commission file notice of the intended filing at least sixty days before the case is filed. Commission Rule 20 CSR 4240-4.017.1(D) provides that the

[2] Section 386.020 (15), RSMo 2016.
[3] Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

Commission may waive the sixty-day notice filing requirement for good cause, including the affirmation of the parties that they have not had contact with the Commission about the application within 150 days before filing the application.

Decision

No existing customers of either Lewis County Co-op or Ameren Missouri will be affected in this transaction. Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.[4] Based on the uncontroverted verified pleadings and Staff's recommendation, the Commission determines all material facts support the following determinations and decisions.

The Commission determines that the Addendum is in the public interest and not detrimental to the public interest in that Lewis County Co-op has existing facilities installed on the affected area identified in the Addendum, which will make the most efficient use of the existing facilities and prevent the duplication of facilities.

It is the Commission's decision that the Addendum is in the public interest as a whole and is not detrimental to the public interest. The Commission will waive application of the 60-day notice requirements of Commission Rule 20 CSR 4240-4.017(A) pursuant to 20 CSR 4240-4.017(D). The Commission will approve the Addendum and will order Ameren Missouri to file a revised tariff sheet reflecting the change in its service area.

THE COMMISSION ORDERS THAT:

1. The Commission waives notice of case filing pursuant to 20 CSR 4240-4.017(D).

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

2. The First Addendum to the Territorial Agreement, filed on October 6, 2021, is approved.

3. Ameren Missouri and Lewis County Co-op are authorized to perform the First Addendum to their Territorial Agreement, and all acts and things necessary to performance.

4. This order shall be effective on February 11, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of The Empire District Electric Company d/b/a Liberty and White River Valley Electric Cooperative for Approval of the Second Amendment to their Sixth Territorial Agreement, as amended, Designating the Boundaries of Exclusive Service Areas of Each Applicant Within the Rainbow Shoals Subdivision in Taney County, Missouri	)	**File No. EO-2022-0132**

REPORT AND ORDER APPROVING SECOND AMENDMENT

ELECTRIC

§9. Jurisdiction and powers of the State Commission
§11. Territorial agreements
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.

§11. Territorial agreements
The Commission may approve a territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing
§24. Procedures, evidence and proof
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of January, 2022.

In the Matter of the Application of The Empire District Electric Company d/b/a Liberty and White River Valley Electric Cooperative for Approval of the Second Amendment to their Sixth Territorial Agreement, as amended, Designating the Boundaries of Exclusive Service Areas of Each Applicant Within the Rainbow Shoals Subdivision in Taney County, Missouri	))))))))	**File No. EO-2022-0132**

REPORT AND ORDER APPROVING SECOND AMENDMENT TO SIXTH TERRITORIAL AGREEMENT

Issue Date: January 12, 2022 Effective Date: February 11, 2022

This order approves the Second Amendment to the Sixth Territorial Agreement between The Empire District Electric Company d/b/a Liberty (Empire) and White River Valley Electric Cooperative (White River) (collectively, the Applicants) to more specifically describe recently-platted lots in the Rainbow Shoals Subdivision in Taney County, Missouri.

Procedural History

On November 10, 2021, the Applicants filed a Joint Application (Application) to approve their Second Amendment to the Territorial Agreement (Amendment). On November 12, the Applicants jointly filed a *Request for Waiver of Notice*, requesting waiver of notice required by 20 CSR 4240-4.017(1), pursuant to 20 CSR 4240-4.017(1)(D), affirming that they had not had contact with the Commission about the subject of the application within the 150 days before filing the application. On

November 16, 2021, the Commission issued its Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation. On December 16, 2021, the Commission's Staff filed its Staff Recommendation, recommending approval of the Amendment. No persons have sought intervention or requested a hearing, nor have the Joint Applicants responded to Staff's Recommendation.

Findings of Fact

1. White River is a rural electric cooperative organized and existing under the laws of Missouri with its principal office in Branson, Missouri. It is a Chapter 394 rural electric cooperative corporation engaged in the distribution of electric energy and service to its members in Taney County. White River is in good standing under the laws of the State of Missouri.

2. Empire is a Kansas Corporation with its principal office and place of business in Joplin, Missouri. Empire is engaged in the business of providing electrical services in Missouri to customers in its service areas. Empire is an electrical corporation and public utility as defined in Section 386.020, RSMo,[1] and is subject to the jurisdiction and supervision of the Commission as provided by law.

3. The Applicants' Sixth Territorial Agreement was approved on June 10, 2009 in File Number EO-2009-0284.

4. The Amendment assigns certain newly platted parcels of land in Taney County, within the Rainbow Shoals subdivision, to the exclusive service area of White River.

[1] All references to the Missouri Revised Statutes will be to 2016.

5. White River has existing facilities within location of the lots identified in the Amendment which will provide for a more orderly future development of electric service to the public.

6. No existing customers of either Empire or White River will have their electric service changed by the proposed Second Amendment.

7. Neither Empire, nor White River had any communication with the Commission about the subject of the application within one hundred fifty days before filing the application.

Conclusions of Law

1. White River is a rural electric cooperative organized under Chapter 394 RSMo, to provide electric service to its members in Missouri.

2. Empire is a Kansas Corporation providing electrical services in Missouri that is subject to the jurisdiction of the Commission per chapters 386 and 393, RSMo. [2]

3. Under Section 394.312.1, RSMo, the Commission has jurisdiction over territorial agreements between electric corporations and rural electric cooperatives, thus, White River is subject to the Commission's jurisdiction in this case. [3]

4. Under Sections 394.312.3 and 5, RSMo, the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

[2] Section 386.020 (15), RSMo 2016.
[3] Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

5. Under Section 394.312.5, RSMo, the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

6. Commission Rule 20 CSR 4240-4.017(1) requires that any person intending to file a case before the Commission file notice of the intended filing at least sixty days before the case is filed. Commission Rule 20 CSR 4240-4.017(1)(D) provides that the Commission may waive the sixty-day notice filing requirement for good cause, including the affirmation of the parties that they have not had contact with the Commission about the application within 150 days before filing the application.

Decision

No existing customers of either Empire or White River will be affected in this transaction. Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.[4] Based on the uncontroverted verified pleadings and Staff's recommendation, the Commission determines all material facts support the following determinations and decisions.

The Commission determines that the Amendment is in the public interest and not detrimental to the public interest in that White River has existing facilities within the location of the lots identified in the Amendment, which will provide for a more orderly future development of electric service to the public, making the most efficient use of the existing facilities and preventing the duplication of facilities.

It is the Commission's decision that the Amendment is in the public interest as a whole and is not detrimental to the public interest. The Commission will approve the

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

Amendment and will order Empire to file revised tariffs incorporating the subject properties' updated metes and bounds. The Commission will waive the sixty-day notice provisions of Commission Rule 20 CSR 4240-4.017(1), as permitted by 20 CSR 4240-4.017(1)(D).

THE COMMISSION ORDERS THAT:

1. The Commission waives the sixty-day notice requirements of Commission Rule 20 CSR 4240-4.017(1).

2. The Second Amendment to the Sixth Territorial Agreement, filed on November 10, 2021, is approved.

3. Empire shall file revised tariffs incorporating the subject properties' updated metes and bounds.

4. This order shall be effective on February 11, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West d/b/a Evergy Missouri West for Approval of a Transportation Electrification Portfolio	)))))	**File No. ET-2021-0151** Tracking Nos. JE-2021-0161, and YE-2021-0160

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally

The Commission is not authorized to issue advisory opinions.

RATES

§3. Jurisdiction and powers of the State Commission

The legislature can, by implication, authorize the Commission to engage in single issue rate making without an explicit grant of such authority in the statute.

§20. Costs and expenses

The rationale of the prohibition on single issue rate making is to prevent the Commission from permitting a utility to raise rates to cover increased costs in one area without considering counterbalancing savings in another area. That rationale does not apply to rates being applied to new services for which a rate has not previously been in effect.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West d/b/a Evergy Missouri West for Approval of a Transportation Electrification Portfolio	)))))	**File No. ET-2021-0151** Tracking Nos. JE-2021-0161, and YE-2021-0160

REPORT AND ORDER

Issue Date: January 12, 2022

Effective Date: January 24, 2022

TABLE OF CONTENTS

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Chief Regulatory Law Judge: Morris L. Woodruff

REPORT AND ORDER

Procedural History

On February 24, 2021, Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively Evergy) filed an application asking the Commission to approve a suite of programs, including implementing tariffs, that would enable Evergy to implement a transportation electrification pilot program, including the installation of additional electric vehicle charging stations, and the deferral of costs associated with the program, including related variances from the Commission's promotional practices rule.[1] Evergy also sought a finding from the Commission that Evergy's plan to expand its Clean Charge Network is prudent from a decisional perspective. Along with its application, Evergy filed the direct testimony of Charles A. Caisley and an extensive Transportation Electrification Portfolio Filing Report.[2]

In response to Evergy's application, the Commission directed that notice of the application be provided to potentially interested parties and established March 19, 2021, as the deadline for filing applications to intervene. The following parties filed timely applications and were allowed to intervene: Renew Missouri Advocates d/b/a Renew Missouri; Union Electric Company d/b/a Ameren Missouri; Midwest Energy Consumers Group (MECG); The Empire District Electric Company d/b/a Liberty; Sierra Club; the Natural Resources Defense Council (NRDC); ChargePoint, Inc.; and Spire Missouri, Inc.

[1] Although Evergy Missouri Metro and Evergy Missouri West filed a joint application, that application was initially filed in separate files for the two companies. ET-2021-0269 was designated as the file to handle Evergy Missouri West's filing and ET-2021-0151 was designated as the file to handle Evergy Missouri Metro's filing. The two files were consolidated by order of the Commission on April 15, 2021, with ET-2021-0151 designated as the lead case.

[2] Evergy filed an updated version of this report on May 6, 2021. That version of the report was admitted into evidence as Exhibit 1.

The implementing tariffs that Evergy filed along with its application carried an effective date of March 26, 2021. The Commission initially suspended those tariffs for 120 days beyond their proposed effective date until July 24, 2021. Subsequently, those tariffs were suspended an additional six months, until January 24, 2022, the maximum amount of time allowed by the controlling statute.[3]

The Commission's Staff (Staff) filed an initial recommendation regarding Evergy's application on March 29, 2021, advising the Commission to either reject the application outright, or to establish a procedural schedule to consider changes to the portfolio of programs included in the application. The Commission established a procedural schedule that directed the parties to prefile testimony and scheduled an evidentiary hearing.

The parties prefiled direct, rebuttal, and surrebuttal testimony. The evidentiary hearing began on October 12 and 13, 2021, and concluded on October 19, 2021. The parties filed initial post-hearing briefs on November 19, 2021, and reply briefs on November 29, 2021.[4]

Introduction

General Findings of Fact

1. Evergy Missouri Metro is a Missouri corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. It is engaged in the generation, transmission, distribution, and sale of electricity in western Missouri and eastern Kansas, operating primarily in the Kansas City metropolitan area. Evergy Missouri Metro is an "electrical corporation" and a "public utility" subject to the jurisdiction,

[3] Section 393.150, RSMo 2016.
[4] The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).

supervision, and control of the Public Service Commission under Chapters 386 and 393, RSMo 2016.[5]

2. Evergy Missouri West is a Delaware corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. It is engaged in the generation, transmission, distribution, and sale of electricity in western Missouri, including the suburban Kansas City metropolitan area, St. Joseph, and surrounding counties. Evergy Missouri West is an "electrical corporation" and a "public utility" subject to the jurisdiction, supervision, and control of the Public Service Commission under Chapters 386 and 393, RSMo 2016.[6]

3. Evergy Missouri Metro and Evergy Missouri West are wholly-owned subsidiaries of Evergy, Inc.[7]

4. The Office of the Public Counsel (Public Counsel) is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

5. Staff is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

6. As part of its application that commenced this case, Evergy requested approval of a transportation electrification portfolio consisting of eight elements:

- Residential Customer EV Outlet Rebate;
- Residential Developer EV Outlet Rebate;
- Commercial EV Charger Rebate;
- Electric Transit Service Rate;

[5] Application, Paragraph 1.
[6] Application, Paragraph 3.
[7] Application, Paragraph 5.

- Business EV Charging Service Rate;
- Customer Education and Program Administration;
- Regulatory Considerations; and
- Clean Charge Network Expansion.[8]

7. Evergy believes that transportation electrification – the transition from the use of vehicles with internal combustion engines to electric vehicles (EVs) - will accelerate in the coming years. Evergy's proposal purports to encourage its customers to utilize enabling technology to charge EVs overnight or in off peak hours when the electrical grid has plenty of generation and there are no transmission or distribution capacity constraints.[9]

8. EPRI (Electric Power Research Institute) projects that, under a medium adoption scenario, the total number of EVs operating in Evergy Missouri Metro's service territory will grow from 2,040 as of September 2020, to approximately 11,350 by 2025, and 32,500 by 2030. Similarly, the total number of EVs operating in Evergy Missouri West's service territory will grow from 970 EVs as of September 2020 to approximately 5,960 by 2025, and 20,750 by 2030.[10]

9. Evergy contends it has proposed modestly sized pilot programs to further Evergy's ability to manage EV load and realize benefits to all its customers over the long term.[11]

[8] Portfolio Filing, Exhibit 1.
[9] Caisley Direct, Exhibit 2, Page 3, Lines 10-16.
[10] Portfolio Filing, Exhibit 1, Page 13.
[11] Caisley Surrebuttal, Exhibit 3, Page 10, Lines 18-20.

10. Evergy proposes a five-year budget for the items in its proposed portfolio as follows:[12]

Program Component	Evergy Missouri Metro	Evergy Missouri West	Missouri Total
Residential Customer EV Outlet Rebate	$ 650,000	$ 350,000	$ 1,000,000
Residential Developer EV Outlet Rebate	$ 30,000	$ 60,000	$ 90,000
Commercial EV Charger Rebate	$ 6,500,000	$ 3,500,000	$ 10,000,000
Customer Education and Program Administration	$ 1,100,00	$ 600,000	$ 1,700,000
Total	$ 8,300,000	$ 4,500,000	$ 12,800,000

11. In addition, Evergy proposed a spending plan related to its request to increase the current cap on construction of its Clean Charge Network as follows:[13]

Jurisdiction	Current Cap	Identified Need	Requested Revised Cap	Spending Plan
Evergy Missouri Metro	400	450	500	$1,200,000
Evergy Missouri West	250	275	300	$1,600,000
Total	650	725	800	$2,800,000

12. Evergy commissioned a study to evaluate the cost effects resulting from the adoption of additional EVs within its Evergy Missouri Metro and Evergy Missouri West service areas. Those studies, prepared for Evergy by ICF, a consulting firm, show that there is a net benefit to all customers when the revenues from EV adoption over the next ten years are weighed against the projected costs to serve those EVs in terms of energy, capacity, and charging infrastructure.[14]

[12] Portfolio Filing, Exhibit 1, Page 22.
[13] Portfolio Filing, Exhibit 1, Page 34.
[14] Nelson Surrebuttal, Exhibit 6, Page 8, Lines 4-7.

13. That study estimates a net present value of EV adoption over ten years of $42,500,000 for Evergy Missouri Metro, and $22,600,000 for Evergy Missouri West in a medium EV adoption scenario.[15]

14. The ICF study considered the costs and benefits of market-wide EV adoption as a whole, but did not attempt to model the cost effectiveness of each program proposed by Evergy, neither did it consider the costs and benefits of the proposed portfolio of programs.[16]

15. Widespread EV adoption, which requires widespread access to charging where people live, work, and play, will result in significant downward pressure on rates if charging is properly managed.[17]

16. There is also a wild card in the deck regarding funding from the federal government related to electrification efforts. Under the recently enacted Infrastructure Investment and Jobs Act, Missouri expects to receive approximately $99 million over five years to support the expansion of an EV charging network in this state.[18]

17. Although Evergy presented its proposed portfolio as a package, Charles Caisley, Evergy's Senior Vice President Marketing and Public Affairs,[19] testified that the portfolio is not a take-it-or-leave-it proposal. Rather, the Commission is free to approve those parts of the portfolio it likes and reject those it does not.[20]

[15] Portfolio Filing, Exhibit 1, Appendix C.
[16] Nelson Surrebuttal, Exhibit 6, Page 7, Lines 18-23.
[17] Baumhefner Surrebuttal, Ex. 700, Page 11, Lines 16-18.
[18] Marke Rebuttal, Exhibit 200, Page 12, Lines 9-16.
[19] Caisley Direct, Exhibit 2, Page 1, Lines 4-6.
[20] Transcript, Pages 91-92, Lines 16-25, 1-12.

General Conclusions of Law

A. Evergy Missouri Metro and Evergy Missouri West are public utilities, and electrical corporations, as those terms are defined in Subsections 386.020(15) and (43), RSMo (Supp. 2020). As such, they are subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. The Commission's subject matter jurisdiction over Evergy's application and proposed tariffs is established under Section 393.150, RSMo.

C. Section 393.150, RSMo, authorizes the Commission to suspend the effective date of a proposed tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

D. Evergy filed its application pursuant to Section 393.1610.1, RSMo (Supp. 2020), which authorizes the Commission to:

> approve investments by an electrical corporation in small scale or pilot innovative technology projects, including but not limited to renewable generation, micro grids, or energy storage, if the small scale or pilot program is designed to advance the electrical corporation's operational knowledge of deploying such technologies, including gaining operating efficiencies that result in customer savings and benefits as the technology is scaled across the grid or network.

E. Utilities are required to provide safe and adequate service.[21]

F. In determining the rates Evergy may charge its customers, the Commission is required to determine whether the proposed rates are just and reasonable.[22]

G. Evergy has the burden of proving its proposed rates are just and reasonable, pursuant to Section 393.150.2, RSMo, "[a]t any hearing involving a rate

[21] Sections 393.130 and 393.140, RSMo.
[22] Section 393.150.2, RSMo.

sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the … electrical corporation . . . ."

H. In order to carry its burden of proof, Evergy must meet the preponderance of the evidence standard.[23] In order to meet this standard, the company must convince the Commission it is "more likely than not" that Evergy's proposed tariff adjustments are just and reasonable.[24]

I. Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony."[25]

J. An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence.[26]

The Issues

1. **Should the Commission approve Evergy's proposed Residential Customer EV Outlet Program?**

Findings of Fact

18. Evergy proposes to offer a rebate of 50 percent of installation cost, up to $500, to homeowners who own an EV, who install a 240V outlet at their home. The goal of the rebate program is to encourage homeowners to utilize a faster Level 2 charger to charge their car rather than a slower Level 1 charger.[27]

[23] *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007).
[24] *Holt v. Director of Revenue, State of Mo*., 3 S.W.3d 427, 430 (Mo. App. 1999).
[25] *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).
[26] *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).
[27] Portfolio Filing, Exhibit 1, Page 23.

19. A Level 2 charger requires the use of a 240V source of power, much as would an electric range or a clothes dryer. A Level 1 charger can be plugged into a typical 120V outlet in a home.[28]

20. A Level 1 charger adds about 4 miles of range to the EV's battery per hour, while a Level 2 charger adds about 25 miles of range per hour. Encouraging a customer to move from a Level 1 charger to a Level 2 charger will allow the customer to complete the charging of their EV in a shorter amount of time while avoiding charging during peak hours.[29]

21. A customer who uses a Level 1 charger to charge their EV overnight will need to be plugged in and drawing power for 8 to 10 hours, meaning they are likely to plug in when the get home from work at what may be a peak usage time. A customer using a Level 2 charger will only need to be drawing power from the grid for a few hours during the night. That means they can do their charging during the early morning hours when demand on the electric grid is low.[30]

22. Because Evergy intends to offer this rebate as part of a pilot program, it should have a goal of gaining additional knowledge to assist the company in moving forward. Since Level 2 charging occurs at a higher power level than Level 1 charging, it will be more readily identified (disaggregated) within customer AMI data, allowing Evergy to develop and refine its AMI disaggregation models. Those models will serve as tools for grid analysis, grid management and future program design.[31]

[28] Transcript, Pages 185-186, Lines 24-25, 1-9.
[29] Voris Surrebuttal, Exhibit 7, Page 11, Lines 13-19.
[30] Transcript, Pages 187-188, Lines 5-25, 1-8.
[31] Voris Surrebuttal, Exhibit 7, Page 12, Lines 3-9.

23. Rebate recipients will be required to sign a customer agreement that enrolls them as a participant in the pilot project wherein Evergy will use their information to closely examine recipients' charging behaviors and attempt to influence their charging behavior.[32]

24. Further, Evergy plans to use the connection to customers who accept the rebate to evaluate education efforts to encourage those customers to program their vehicle to charge off-peak.[33]

25. In concept, a "free rider" is a customer who would take an offered rebate while taking an action that they would do anyway without the incentive of the rebate. Essentially, it would mean the utility is giving the customer free money without actually changing the customer's behavior.[34]

26. When customers install Level 2 chargers through a program like this rebate program, their participation in the program provides Evergy with an opportunity to educate them on the benefits of off-peak charging.[35]

27. The proposed budget for this program is $1 million over five years for the combined Evergy Missouri Metro and Evergy Missouri West service territories.[36]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission believes this proposed rebate program is appropriate as a pilot program to enable Evergy to encourage customers to adopt Level 2 charging in their

[32] Voris Surrebuttal, Exhibit 7, Page 14, Lines 2-6.
[33] Voris Surrebuttal, Exhibit 7, Page 12, Lines 10-18.
[34] Transcript, Page 560, Lines 14-20.
[35] Wilson Surrebuttal, Exhibit 901, Page 6, Lines 3-14.
[36] Portfolio Filing, Exhibit 1, Page 22.

homes. It is important to remember that this is proposed to be a pilot program that will enable Evergy to learn more about its customers and their charging habits. Several parties raised concerns about free ridership and cost effectiveness, but this program is not intended to be the final word on how the company will deal with Level 2 charging issues as the number of EVs in its territory increases. As the number of EVs on the road increases, Evergy's customers likely will move toward Level 2 charging over the coming years without the benefit of a rebate program. But if they do so without educated guidance from the utility, the impact on the electrical system could be significant. Thus, Evergy needs a pilot program to study these questions.

Public Counsel also suggests that this program is unnecessary because we already know that mandatory time-of-use rates are an essential response to ensure that EV charging does not occur on peak. But that argument ignores the increased knowledge about customer charging practices that can be derived through this small-scale rebate program, which can then be used to help Evergy design better targeted time-of-use rates in the future.

With the approval of the program, additional issues raised by the parties come into question.

a. If the Commission approves Evergy's proposed Residential Customer EV Outlet Rebate Program, should the Commission require that participants also sign up for the Company's existing Whole House, Opt-In Time-of-Use Rate?

Findings of Fact

28. The Residential Customer EV Outlet Rebate pilot program as proposed by Evergy does not require the recipients of the rebate to take service under the company's

existing time-of-use rate.[37] Rather, Evergy proposes to educate the customers to use their Level 2 charger to charge their EV at non-peak periods during the rebate application process.[38]

29. Unless customers are dissuaded from continuing to use their Level 2 chargers at peak demand periods, the energy costs borne by all customers on the Evergy system can be expected to increase even when less energy is consumed.[39]

30. Studies around the country have shown that participating customers who are required to take service on a time-of-use rate charge their EVs during off-peak hours. Alternatively, those who do not have a financial incentive to avoid the peak begin charging immediately upon returning home in the evening during peak hours.[40] Once customers are on a time-of-use rate they are likely to enjoy the fuel cost savings that can be provided by the time-of-use rates, and are likely to remain on such a rate.[41]

31. It is not necessary to allow customers to choose whether to sign up for a time-of-use rate to create a control group for purposes of study during a pilot program. That experiment has already been done and confirms that customers who are not on time-of-use rates will be unlikely to avoid charging during peak usage periods.[42]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The pairing of time-of-use rates with increased use of Level 2 charging is vital. As previously indicated, this is a pilot program designed to increase Evergy's knowledge

[37] Portfolio Filing, Exhibit 1, Page 23.
[38] Voris Surrebuttal, Exhibit 7, Page 14, Lines 9-12.
[39] Staff Rebuttal Report, Exhibit 100, Page 11, Lines 1-4.
[40] Baumhefner Surrebuttal, Exhibit 700, Page 16. Lines 4-15.
[41] Transcript, Page 331, Lines 8-13.
[42] Transcript, Page 332. Lines 10-23.

about its customer's charging behaviors. The pilot program can be most useful in examining those behaviors, and in designing a response, if it is assumed that time-of-use rates will be in place. Evergy's goal for the pilot program will be met if participation in a time-of use rate is paired with the program proposed by Evergy.

The Commission will direct Evergy to require participants in the Residential Customer EV Outlet Rebate program to sign up for a time-of-use rate for a period of at least one year as a condition for participation in the program. Initially, that means the existing Whole House, Opt-In Time-of-Use Rate, but if Evergy develops and the Commission approves additional optional rates better tailored for residential EV charging it may use such rates in the program.

b. If the Commission approves Evergy's proposed Residential Customer EV Outlet Rebate Program, should the Commission modify the program consistent with ChargePoint's Recommendations?

Findings of Fact

32. ChargePoint, one of the intervening parties in this case, proposes several modifications to Evergy's Residential Customer EV Outlet Rebate program. ChargePoint is an electric vehicle charging network that provides both software and hardware related to EV charging.[43]

33. ChargePoint's first proposed modification asks the Commission to require Evergy to remove the proposed cap on the rebate that would limit the rebate to 50 percent of the cost of installation. Instead, ChargePoint would allow for a full rebate of $500 per qualifying customer without regard for the cost of installation. There is no reason to

[43] Wilson Rebuttal, Exhibit 900, Page 1-2, Lines 13-22, 1-18.

reduce a customer's rebate simply because they were lucky enough to have low installation costs at their home.[44]

34. ChargePoint's second proposed modification asks that Evergy target the proposed rebates for the installation of an EV charging station rather than for the installation of a 240V outlet. The goal of the program is to encourage the installation of charging stations, not outlets, and this change would allow the customer to hardwire an EV charger directly to a 240V circuit rather than install what might be a superfluous outlet. If the customer preferred to install a 240V outlet to plug in an EV charging station they would still be free to do so.[45]

35. ChargePoint's third proposed modification asks that Evergy be directed to develop and keep updated a list of qualifying Level 2 home chargers for which the rebate would be paid. Such chargers should be ENERGY STAR certified, have a safety certification, and have managed charging capabilities, meaning it is a "smart" charger.[46]

36. A customer does not need a "smart" charger to participate in this pilot program for three reasons. First, requiring a "smart", communicating EV charger is not necessary for the proposed program and could be an unnecessary expense for the customer. Second, a "smart" charger requires a reliable internet connection to function and that may be difficult to establish and maintain in the customer's garage. Third, an EV's on-board charge management system often has more charge management capabilities than a third-party "smart" charger.[47]

[44] Wilson Rebuttal, Exhibit 900, Page 7-8, Lines 17-20, 1-8.
[45] Wilson Rebuttal, Exhibit 900, Page 8, Lines 9-20.
[46] Wilson Rebuttal, Exhibit 900, Page 9, Lines 1-19.
[47] Voris Surrebuttal, Exhibit 7, Page 19, Lines 1-12.

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission agrees, in part, with two of ChargePoint's proposed modifications. First, the rebate is better targeted toward the installation of an EV charger rather than simply an outlet. Thus, it should be available to customers who would install that charger by directly hardwiring it to a 240V circuit rather than installing what may be an unnecessary outlet. Of course, customers who prefer to be able to plug in a charger should also be able to qualify for the rebate by installing a 240V plug.

Similarly, since the target of the rebate is the installation of an EV charger, it makes sense and is administratively simpler to allow for the payment of an up to $500 rebate toward the installation and cost of a charger, limited to the actual cost of installation and purchase of a charger.

The Commission does not accept ChargePoint's third proposed modification. Evergy does not need to become involved in the details of a customer's choice of which particular charger best meets their needs as part of this pilot program.

2. Should the Commission approve Evergy's proposed Residential Developer EV Outlet Rebate Program?

Findings of Fact

37. Evergy proposes a Residential Developer EV Outlet Rebate that would be designed to provide new home developers an incentive to pre-wire new homes with adequate circuit capacity to accommodate Level 2 EV charging by future residents. Such developer would be eligible to receive a $250 rebate to install a dedicated 240V circuit,

including a NEMA 14-50 outlet, to enable Level 2 EV charging. A developer would be limited to one $250 rebate per new home constructed.[48]

38. Evergy has proposed this program as a means of encouraging interest in EV charging hardware among property developers. The goal is to "kickstart" a movement within the developer community to start offering EV charging capabilities as a standard feature for new homes.[49]

39. The proposed budget for this program is only $87,500 over five years for the Evergy Metro and Evergy West service territories combined.[50]

40. The proposed tariff language says that to be eligible for a rebate the developer must comply with the application instructions. When Evergy develops those detailed application instructions, it intends to include a requirement that the outlet be installed in a location where it can be used to charge an EV. Further, Evergy retains the right to inspect the premises to ensure that the circuit and outlet are installed in a location appropriate for charging a vehicle.[51]

41. An alternative to implementation of this rebate to facilitate installation of charging infrastructure in newly constructed homes is to encourage local governments to change local building codes to mandate such installation. One of the purposes of this rebate is to attract, engage, and educate developers about EV charging to encourage them to support future building code changes.[52]

[48] Portfolio Filing, Exhibit 1, Page 24.
[49] Transcript, Page 114, Lines 5-19.
[50] Portfolio Filing, Exhibit 1, Appendix A.
[51] Transcript, Page 185, Lines 2-20.
[52] Voris Surrebuttal, Exhibit 7, Page 21, Lines 9-11.

42. As part of the installation, Evergy will require the developer to place a branded sticker on the outlet to communicate to the homeowner that the 240V outlet is available specifically for EV charging. The new homeowners will also receive information about the purpose of the installed outlet, benefits of Level 2 charging, and time-of-use rates.[53]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Residential Developer EV Outlet Rebate pilot program is a reasonable and relatively inexpensive means by which Evergy may engage the developer community to encourage them to pre-install charging infrastructure in newly constructed homes. The Commission is concerned that the proposed program may not have initially included a requirement that the 240V outlet be placed in a location where it can be used for charging. Evergy has indicated its intent to impose such a requirement in the detailed instructions to accompany the rebate application. Nevertheless, the Commission will direct Evergy to impose such a requirement as a condition for eligibility for the rebate. Further, to limit the risk of free ridership, the Commission will direct that the rebate not be made available for developments in localities that have construction or building codes that require the installation of a 240V outlet in a location where it can be used for EV charging.

[53] Voris Surrebuttal, Exhibit 7, Page 21, Lines 12-16.

3. Should the Commission approve Evergy's proposed Commercial EV Charger Rebate Program?

Findings of Fact

43. Evergy proposes to offer a Commercial EV Charger Rebate to third-party charging station installations at commercial locations across its service territory.[54]

44. Evergy intends to use this rebate program to encourage the deployment of EV charging stations at common destinations such as workplaces, fleet parking sites, retail sites, multi-family dwellings, and along highway corridors. Evergy intends to use these charging stations to collect and analyze charger utilization data for various use cases and better understand where EV charging is occurring on its system.[55]

45. The program provides for a rebate to $2,500 per port for Level 2 charging stations, and $20,000 per unit for DC Fast Charging stations. The rebate would be capped at between $25,000 and $65,000 per premise (depending on site type). The total budget for the program would be $10 million.[56]

46. Since 2015, Evergy has operated the Clean Charging Network throughout its service territories. As of February 2021, the Clean Charging Network included 393 charging stations in the Evergy Missouri Metro, and 244 in the Evergy Missouri West service territories.[57]

47. The EV chargers currently served under the tariff implementing the Clean Charging Network do not generate sufficient revenues to cover the revenue requirement caused by the Clean Charging Network's infrastructure and related costs. There is

[54] Portfolio Filing, Exhibit 1, Page 24.
[55] Portfolio Filing, Exhibit 1, Pages 24-25.
[56] Portfolio Filing, Exhibit 1, Appendix A.
[57] Portfolio Filing, Exhibit 1, Page 2.

concern that subsidization of a new charger in close proximity to the existing Clean Charging Network through a rebate would dilute the use of the existing charger stations. With the same amount of charging revenue being derived from a greater level of investment, an additional revenue requirement would be caused.[58]

48. Missouri expects to receive $99 million in federal funding over the next five years to support the expansion of an EV charging network in the state.[59]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission is not opposed to the concept of a commercial EV charger rebate program, but Evergy has failed to demonstrate that such a program is needed in its service territories. The existing Clean Charging Network appears to be sufficient to meet charging needs at this time, and in the near future Missouri expects to receive a large infusion of federal funding to support expansion of an EV charging network. Based upon the record, there is no evidence that a commercial EV charger rebate program is needed and it will not be approved.

The following identified sub-issues would only need to be addressed if the Commission approved the commercial EV charger rebate program. Since the Commission has not approved that program they need not be addressed.

[58] Staff Rebuttal Report, Exhibit 100, Page 21, Lines 5-13.
[59] Marke Rebuttal, Exhibit 200, Page 12, Lines 12-16.

a. If the Commission approves Evergy's proposed Commercial EV Charger Rebate Program, should the Commission modify the program consistent with ChargePoint's recommendations?

b. If the Commission approves Evergy's proposed Commercial EV Charger Rebate Program, should the Commission require that 20 percent of commercial rebates be reserved for multi-family locations?

c. If the Commission Approves Evergy's Proposed Commercial EV Charger Rebate Program, should the Commission order rebate incentive amounts be capped on a percentage basis not to exceed 20 percent of the total costs for a charger station?

4. Should the Commission approve Evergy's proposed Electric Transit Service Rate?

Findings of Fact

49. Evergy proposes a new Electric Transit Service pilot rate option for transit bus fleet customers in Missouri to increase EV adoption in the battery electric bus segment. A more favorable rate will encourage transit companies to purchase battery electric buses.[60]

50. The Electric Transit Service rate is a two-period time-of-use rate with a 12-hour off-peak period of 6 p.m. to 6 a.m., which aligns with typical fleet depot charging patterns. The rate removes the demand charge, while retaining a small local facility demand charge to incentivize managed charging. Transit customers must separately meter their EV charging station to participate in the rate.[61]

[60] Portfolio Filing, Exhibit 1, Page 27.
[61] Portfolio Filing, Exhibit 1, Page 27.

51. Evergy anticipates that no customers will immediately be served on the Electric Transit Service Rate and only a nominal amount of consumption is expected to be served pursuant to the rate in the near term.[62]

52. The specific provisions of the Electric Transit Service Rate will be reviewed and possibly adjusted in a future rate case.[63]

53. The Kansas City Area Transportation Authority has told Evergy Missouri Metro that its existing small general service rate would make electric buses uncompetitive with its existing internal combustion buses, and that they need a rate that would substantially reduce their overall electric fuel costs before they can move forward with electrifying their fleet.[64]

54. The off-peak charging rate established by this tariff would overlap by a couple hours with Evergy's system peak in the evening hours.[65]

55. Nevertheless, the twelve-hour charging window enabled by the two-period time-of-use rate with a 12-hour off-peak period of 6 p.m. to 6 a.m., is consistent with the charging needs of the transit fleet.[66]

Conclusions of Law

There are no additional conclusions of law for this portion of this issue. The legality of the approval of the rate at this time will be addressed in the sub-issues.

Decision

The Commission finds that overall, this Electric Transit Service Rate should be approved at this time. This is a relatively simple rate that will have only a minimal impact

[62] Portfolio Filing, Exhibit 1, Page 27.
[63] Lutz Surrebuttal, Ex. 5, Page 3, Lines 16-18.
[64] Portfolio Filing, Exhibit 1, Page 28.
[65] Transcript, Page 279, Lines 1-18.
[66] Transcript, Page 279, Lines 1-18.

on Evergy's overall rates and earnings in the near future. It will, however, enable Evergy to provide guidance to potential customers of that rate as to what they can expect to pay, at least during the pilot period, for charging services. Having that information available now rather than later may assist transit service providers in making purchasing decisions.

The Commission is concerned about the potential overlap between the off-peak rate and the actual system peak that will occur during the evening hours. Evergy will be required to study that aspect of the rate, and shall report the results of that study when this rate is reviewed in subsequent general rate cases. The information to be collected as part of the study shall include, at a minimum, the following information for each billing cycle by winter and summer rates:

1. Number of buses being charged or charging stations being used
2. kWh consumption by on-peak and off-peak periods. During off-peak periods, kWh consumption should be broken down into two periods – (1) 6:00 p.m. to 8:00 p.m.; and (2) 8:00 p.m. to 6:00 a.m.[67]
3. kW consumption
4. Amount of power (kWh) consumed from carbon free resources
5. Revenue
6. Any infrastructure investment incurred by Evergy related to the Electric Transit Service Rate
7. All incremental costs associated with serving the bus transit pilot, including fuel and purchase power costs

[67] The 6:00 p.m. to 8:00 p.m. time period is to be Central Time year-round to mirror the Time-of-Use pricing periods in Evergy's tariffs. See. Evergy Missouri West, Inc. adopted KCP&L Greater Missouri Operations Co. P.S.C. Mo. No. 1, 1st Revised Tariff Sheet No. 146.6, and Evergy Metro, Inc. adopted Kansas City Power & Light Co. P.S.C. No. 7, 1st Revised Tariff Sheet No. 7A..

Staff, Public Counsel and any other party may provide input on additional parameters for consideration by the Commission.

a. Is it lawful for the Commission to approve a rate for this new service outside of a general rate case?

Findings of Fact

56. Electric transit vehicles can currently be charged by their owners under Evergy's existing general service rate schedules.[68]

57. The new Electric Transit Service Rate significantly differs from the existing general electric service rates in that it was designed to increase EV adoption in this vehicle segment, while being revenue neutral for the company.[69]

58. The existing large general service rate schedule is poorly suited for EV charging because it contains a demand charge. A demand charge creates a significant financial obstacle for customers because of the combination of high power and extremely low load factor associated with EV charging.[70]

59. Evergy will examine the impact of the new rate on battery electric bus charging patterns and loads in an effort to better understand how those rates can be used to meet the needs of a growing area of electrification.[71]

Conclusions of Law

K. Section 393.270.4, RSMo provides: "[i]n determining the price to be charged for gas, electricity, or water the commission may consider all facts which in its judgement have any bearing upon a proper determination of the question…."

[68] Transcript, Page 549, Lines 12-17.
[69] Portfolio Filing, Exhibit 1, Page 27.
[70] Lutz Surrebuttal, Exhibit 5, Page 4, Lines 12-16.
[71] Portfolio Filing, Exhibit 1, Page 28.

L. In practice, the courts have held that the Commission's determination of the appropriateness of a utility's rate is to be based upon all relevant factors.[72]

M. Failure to consider all relevant factors is generally forbidden as single issue ratemaking.[73]

N. As a creature of statute, the Commission's powers are limited to those conferred by statutes, either expressly or by clear implication as necessary to carry out the powers specifically granted.[74]

O. The legislature can, by implication, authorize the Commission to engage in single issue rate making without an explicit grant of such authority in the statute.[75]

P. Section 393.1610.1, RSMo (Supp. 2020), authorizes the Commission to:

> approve investments by an electrical corporation in small scale or pilot innovative technology projects, including but not limited to renewable generation, micro grids, or energy storage, if the small scale or pilot program is designed to advance the electrical corporation's operational knowledge of deploying such technologies, including gaining operating efficiencies that result in customer savings and benefits as the technology is scaled across the grid or network.

Q. The rationale of the prohibition on single issue rate making is to prevent the Commission from permitting a utility to raise rates to cover increased costs in one area without considering counterbalancing savings in another area. That rationale does not apply to rates being applied to new services for which a rate has not previously been in effect.[76]

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[72] *State ex rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 719 (Mo.1957)".
[73] *State ex rel. Public Counsel v. Public Service Commission*, 397 S.W. 3d 441, 448 (Mo. App. 2013).
[74] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979).
[75] *State ex rel. Public Counsel v. Public Service Com'n.,* 397 S.W.3d 441, 450, (Mo. App. 2013). The Commission's promulgation of a rule that allowed for single issue rate making in the context of a Missouri Energy Efficiency Investment Act (MEEIA) filing was upheld against a challenge by Public Counsel that a legislative delegation of such authority had to be explicit.
[76] *State ex rel. Sprint Spectrum, L.P. v. Missouri Public Service Com'n*, 112 S.W.3d 20, 28 (Mo. App. 2003).

Decision

The Commission finds that it is lawful to approve this rate outside of a general rate case for two reasons. First, section 393.1610.1 authorizes the Commission to approve pilot programs intended to advance the electric utility's operational knowledge. The statute's grant of authority to approve a pilot program implies the authority to approve rates to pay the cost of such a program.

Second, the courts have held that the prohibition against single issue ratemaking does not apply when a rate for a new service is being proposed. The proposed time-of-use rate that offers significantly different terms for payment for electricity used to charge electric transit vehicles, is a charge for a new service within the exception to the single issue ratemaking described by the court in the *Sprint Spectrum* case. The suggestion that it is not a new service because at its heart it is still a charge for electric service that is already available under Evergy's existing tariffs, understates the extent of the exception recognized by the court in the *Sprint Spectrum* case. It could just as easily be said that the charge for a new service in that case was at heart just a charge for telecommunications services. In sum, the Commission finds that it has the authority to approve this new charge in this case.

b. Is it lawful for the Commission to approve a rate for this new service at this time given the Company has elected PISA?

Findings of Fact

60. Evergy elected to implement Plant In Service Accounting ("PISA") by filing a notice with the Commission on January 1, 2019.[77]

[77] File No. EO-2019-0045 (Evergy Missouri West) and File No. EO-2019-0047 (Evergy Missouri Metro).

Conclusions of Law

R. Section 393.1400, RSMo (Supp. 2020) allows electrical corporations, such as Evergy, to elect to implement what is known as "Plant In Service Accounting," usually referred to as PISA. To implement PISA, the utility must file a notice with the Commission announcing that election to make the PISA deferrals.[78]

S. Section 393.1655.2, RSMo (Supp. 2020) requires the base rates of an electrical corporation that elects to implement PISA to be frozen for a period ending at the third anniversary of the date the company gave notice to make the PISA deferrals.

Decision

The rate freeze imposed on Evergy following its election to implement PISA ended, three years from January 1, 2019, when it filed its notice to elect PISA. In other words, that freeze ended on January 1, 2022, and is no longer in effect. The Commission finds that it is lawful to approve this rate at this time.

c. If the Commission does approve the new rate, should the Company use the revenue received from the rate schedule to offset the costs Evergy is requesting to defer to a regulatory asset account?

Findings of Fact

61. Staff recommends the Commission reject Evergy's proposed Electric Transit Service Rate, but recommends that if the new rate is approved, the Commission order that the revenue received from the rate schedule be used to offset the costs Evergy is requesting to defer to a regulatory asset account.[79] (The use of a regulatory asset account will be further addressed later in this report and order.)

[78] Section 393.1400.5, RSMo (Supp. 2020).
[79] Staff Rebuttal Report, Exhibit 100, Page 5, Lines 3-6.

62. Evergy responded to Staff's recommendation by pointing out that it would be difficult or impossible to identify whether the revenue from a particular charging station is new incremental revenue. It also pointed out that all revenues from whatever source will be considered in a future rate case and will ultimately flow back to the benefit of ratepayers.[80]

Conclusions of Law

There are no additional conclusions of law for this sub-issue.

Decision

There was very little evidence, or even discussion, offered by the parties about the application of Staff's proposal to the Electric Transit Service Rate. The concerns Evergy raised in opposition seem to be applicable to the proposed Business EV Charging Service Rate, which will be addressed in the next issue, but are not applicable to this proposed rate. The revenues received through the Electric Transit Service Rate can be narrowly traced and those revenues derived from the rate can be used to offset costs of the Pilot Program deferred in a regulatory asset. The Commission will adopt Staff's proposal as it applies to this rate.

5. Should the Commission approve Evergy's proposed Business EV Charging Service Rate?

Findings of Fact

63. Evergy proposes a new Business EV Charging Service Rate option for commercial customers to increase EV adoption, meet workplace employee and fleet EV charging needs, support public EV service provider's networks, and maximize grid

[80] Ives Surrebuttal, Ex 4, Pages 8-9, Lines 4-23, 1-3.

benefits of EV charging load at commercial locations. Any commercial customer with an EV charging station is eligible for the rate.[81]

64. The Business EV Charging Service Rate is a time-of-use rate with three time periods to encourage workplace and fleet charging during off-peak times. The new rate also eliminates the demand charge while retaining a facility demand charge to incentivize managed charging.[82]

65. Evergy's objective in proposing this rate is to establish the rate as an incremental offering to meet the anticipated future needs of its customers. Evergy anticipates that few customers will immediately be served on the rate and only a nominal amount of consumption is expected to be served under this rate in the near term.[83]

66. Evergy's proposed Business EV Charging Service Rate is complex and will have as yet unknown implication on how Evergy recovers its costs from its various customer classes. Those aspects of the proposed rate should be carefully examined in the context of a class cost of service study performed in a general rate case.[84]

67. Evergy has already filed a 60-day notice of intent to file its next general rate case. Evergy Missouri Metro's notice created File No. ER-2022-0129 and Evergy Missouri West's notice created File No. ER-2022-0130. Both notices were filed on November 8, 2021, meaning the rate cases can be filed after January 7, 2022.

Conclusions of Law

There are no additional conclusions of law for this issue.

[81] Portfolio Filing, Exhibit 1, Page 28.
[82] Portfolio Filing, Exhibit 1, Page 29.
[83] Portfolio Filing, Exhibit 1, Page 29.
[84] Transcript, Page 506, Lines 9-16.

Decision

There are many unanswered questions about the details of the Business EV Charging Service Rate. The Commission is not opposed to the concepts behind that rate, but since Evergy acknowledges that it does not anticipate providing substantial amounts of electricity under this rate in the near future, and Evergy intends to file a new rate case in the near future, it is appropriate for the Commission to consider this proposed rate within the context of a general rate case. The Business EV Charging Service Rate will be rejected at this time.

The following identified sub-issues would only need to be addressed if the Commission approved the Business EV Charging Service Rate. Since the Commission has not approved that rate these sub-issues need not be addressed.

a. Is it lawful for the Commission to approve a rate for this new service outside of a general rate case?

b. Is it lawful for the Commission to approve a rate for this new service at this time given the Company has elected PISA?

c. If the Commission does approve this new rate should the Company use the revenue received from the rate schedule to offset the costs Evergy is requesting to defer to a regulatory asset account?

6. Should the Commission approve Evergy's proposed cap increase for the Clean Charge Network expansion?

Findings of Fact

68. Evergy currently operates a network of public charging stations known as the Clean Charge Network. The Clean Charge Network was launched in 2015 and is intended to help address range anxiety and access concerns.[85]

[85] Portfolio Filing, Appendix E.

69. In Kansas City, the number of non-home chargers will need to increase from 1,458 in 2020, to 10,314 in 2030 to support anticipated EV market growth.[86]

70. The Clean Charge Network tariffs that were approved in Evergy Missouri West's and Evergy Missouri Metro's last rate cases, ER-2018-0146 and ER-2018-0145, capped the number of stations served on that tariff to 250 stations for Evergy Missouri West and 400 stations for Evergy Missouri Metro.[87] In a partial stipulation and agreement that was approved by the Commission in those rate cases, Evergy agreed it would not expand the Clean Charge Network beyond those capped numbers without approval from the Commission.[88]

71. Evergy seeks authority from the Commission to expand the Clean Charge Network to 300 stations for Evergy Missouri West and 500 stations for Evergy Missouri Metro. Evergy plans to spend a total of $2,800,000 to install the additional stations.[89]

72. In the Evergy Missouri Metro service area, of the 100 additional stations, 50 would be allotted to the Kansas City Streetlight Charging Project in partnership with the Metropolitan Energy Center. Another four stations would support the emerging use of transportation network company/rideshare. The other 46 stations would provide operational flexibility for Evergy to use, or not, at its discretion.[90]

73. In the Evergy Missouri West service area, of the 50 additional stations, 24 would be allotted to be used in highway corridor locations along secondary and tertiary

[86] Baumhefner Surrebuttal, Exhibit 700, Page 7, Lines 19-20.
[87] Staff Rebuttal Report, Exhibit 100, Page 20, Lines 1-5.
[88] Portfolio Filing, Exhibit 1, Page 34.
[89] Portfolio Filing, Exhibit 1, Page 34.
[90] Voris Surrebuttal, Exhibit 7, Page 4, Lines 3-10.

highways. The other 26 stations provide operational flexibility for Evergy to use, or not, at its discretion.[91]

74. Evergy is not asking the Commission to preapprove the spending of any set amount for construction of any additional charging stations. Any such spending would be subject to a full regulatory review in a future rate case.[92]

Conclusions of Law

There are no additional conclusions of law for this portion of this issue.

Decision

Staff, Public Counsel, and MECG oppose the proposed expansion of the Clean Charge Network in general, arguing that the network is failing to generate sufficient revenues to cover its costs and has failed to encourage the growth of EV ownership. Those arguments will be addressed in greater detail in the portion to this order addressing the question of whether the Commission should make a finding of decisional prudence regarding the expansion of the Clean Charge Network.

The Commission finds that in general terms it is appropriate for Evergy to consider expanding its Clean Charge Network. In making that finding, the Commission emphasizes that it is not directing Evergy to expand its network, merely authorizing it to do so. Nor is the Commission authorizing any specific spending on the expansion of that network at this time. Any cost incurred to construct or operate chargers will be subject to a full regulatory review in a future rate case.

[91] Voris Surrebuttal, Exhibit 7, Page 4, Lines 11-16.
[92] Ives Surrebuttal, Exhibit 4, Page 13, Lines 5-8.

The Commission will increase the current cap on the number of chargers allowed in the network. The details of that allowed increase will be addressed in the subsequent sub-issues.

a. Should the Commission approve Evergy's request to expand its Clean Charge Network along the highway corridors?

Findings of Fact

75. Evergy proposes to use 24 of the additional charging stations to be authorized for inclusion in the Clean Charge Network for the Evergy Missouri West service territory to install fast charging hubs along highway corridors to enable long distance travel for EV drivers. Evergy proposes to use this expansion to better meet an interim market need in the absence of adequate charging services being offered by independent charging providers.[93]

76. Evergy has not identified the locations of these additional highway corridor fast chargers, but all such sites will be in Evergy's existing service territory.[94]

Conclusions of Law

There are no additional conclusions of law for this portion of this issue.

Decision

The Commission does not believe that the proposed expansion of the Clean Charge Network to include additional fast charging stations in highway corridors is appropriate at this time. Evergy has not provided adequate detail about its plans and this type of highway corridor charging may well be the focus of federal funding efforts. Evergy's request for authority to add 24 additional charging stations in highway corridors in the Evergy

[93] Portfolio Filing, Exhibit 1, Page 35.
[94] Voris Surrebuttal, Exhibit 7, Page 8, Lines 9-17.

Missouri West service territory is denied. That means Evergy will be authorized to add 26 additional charging stations in the Evergy Missouri West service territory to provide operational flexibility for Evergy to use, or not, at its discretion.

b. Should the Commission approve Evergy's request to partner with the Metropolitan Energy Center and the City of Kansas City, Missouri to pilot streetlight charging installations in the city's right of way?

Findings of Fact

77. Of the additional charging stations Evergy is proposing to add to the Clean Charge Network in the Evergy Missouri Metro service area, 50 would be allotted to the Kansas City Streetlight Charging Project in partnership with the Metropolitan Energy Center and the City of Kansas City.[95]

78. The project is funded by a federal grant and will demonstrate and test the benefits of curbside charging for EVs using streetlight infrastructure. The goal of the program is to evaluate efforts to use streetlight-based chargers to better serve and support EV drivers, particularly in densely populated residential areas without off-street parking.[96]

Conclusions of Law

There are no additional conclusions of law for this portion of this issue.

Decision

This is the one aspect of Evergy's proposed portfolio that no party opposes. The Commission agrees that it is appropriate and will increase the current cap on the number of chargers allowed in the network to meet the requirements of this project.

[95] Voris Surrebuttal, Exhibit 7, Page 4, Lines 3-10.
[96] Portfolio Filing, Exhibit 1, Page 35.

c. Should the Commission approve Evergy's request to utilize some of the charging stations under the cap toward use by transportation network companies/rideshare companies?

Findings of Fact

79. Evergy has proposed to dedicate four additional charging stations in the Evergy Missouri Metro service territory to an as yet undefined plan to encourage the use of EVs by transportation network companies or rideshare companies.[97]

80. Evergy plans to pilot DC Fast Charging infrastructure that can be used by rideshare programs and companies to provide the benefits of EV usage to customers who may not own a personal vehicle. Evergy will work with stakeholders and communities to identify locations that enable the use of EVs for ridesharing and promote further adoption of EVs among rideshare drivers.[98]

81. Evergy has not described any current agreement with Uber, Lyft, or any other rideshare provider.[99]

Conclusions of Law

There are no additional conclusions of law for this portion of this issue.

Decision

The Commission finds that the concept of using the Clean Charge Network to encourage the use of EVs by ride share providers is an appropriate use of that network and use of four additional charging stations for that purpose is approved.

However, at this time, the use of the Clean Charge Network to encourage use of EVs by ride share providers is still a rather ill-defined concept that will need to be fleshed out by Evergy in conjunction with interested stakeholders. The Commission will direct

[97] Voris Surrebuttal, Exhibit 7, Page 4, Lines 7-8.
[98] Portfolio Filing, Exhibit 1, Page 36.
[99] Marke Rebuttal, Exhibit 200, Page 22, Lines 17-19.

Evergy to report to Staff regarding those discussions with stakeholders and progress toward implementation of the concept. The Commission will direct Evergy to track usage data from such rideshare charging stations as part of its reports to Staff.

d. Should the Commission approve Evergy's request that the Commission find that the limited and targeted Clean Charge Network expansion plans Evergy has proposed in this filing are prudent from a decisional perspective?

82. Evergy requests that the Commission "find that the limited and targeted CCN [Clean Charge Network] expansion plans Evergy has announced in this filing are prudent from a decisional perspective."[100]

83. At the hearing, Evergy's witness, Darren Ives, clarified that Evergy was seeking a Commission statement that "the one answer the Commission won't use when we bring constructed charging stations back in for requested recovery is that utilities should not be building charging stations."[101] He further explained that Evergy agreed that a Commission review and determination of the prudence of construction of a particular charging stations would not be precluded by the finding of decisional prudence Evergy seeks.[102]

84. Evergy did not seek a finding of decisional prudence from the Commission when it built the initially authorized 650 chargers as part of its Clean Charge Network. Instead, it simply built the chargers and then sought recovery in a general rate case.[103]

85. The parties vehemently disagree about the effectiveness of the current Clean Charge Network. Evergy points to the existence of the extensive Clean Charge

[100] Portfolio Filing, Exhibit 1, Page 32.
[101] Transcript, Page 235, Lines 16-20.
[102] Transcript, Pages 235-236, Lines 21-25, 1.
[103] Transcript, Pages 539-540, Lines 23-25, 1-6.

Network in its Evergy Missouri Metro and Evergy Missouri West service territories as a reason for a faster growth rate of EV ownership in those service territories compared to its Kansas Central service territory, where the charging network is not as robust.[104]

86. Public Counsel counters that the combined areas of St. Louis City, St. Louis County, and St. Charles County, an area that does not have a utility owned charging network, has outpaced Evergy's Missouri service areas in the registration of EVs.[105]

87. The parties do not even agree on the number of existing EVs in Evergy's Missouri service territories. Evergy reports that based on an EPRI[106] study, there were 3,010 EVs in the combined Evergy Missouri Metro and Evergy Missouri West territories as of September, 2020.[107] Public Counsel argues, based on its witnesses counting of EV registration reports of the Missouri Department of Revenue, that there were only 1,412 EVs (1,305 battery and 107 plug-in hybrids) in Evergy's Missouri service territories in October 2020.[108] Evergy countered during its cross examination of Public Counsel's witness that the Missouri Department of Revenue's registration numbers seriously undercounted the number of plug-in hybrids,[109] but did not offer any evidence to explain that undercount.

Conclusions of Law

T. The Commission is not authorized to issue advisory opinions.[110]

[104] Portfolio Filing, Exhibit 1, Page 5.
[105] Marke Rebuttal, Exhibit 200, Page 10, Lines 1-6.
[106] Electric Power Research Institute.
[107] Portfolio Filing, Exhibit 1, Page 13.
[108] Marke Rebuttal, Exhibit 200, Page 9, Lines 4-12, and Errata Sheet, Exhibit 204.
[109] Transcript, Pages 574-583.
[110] *State ex rel. Laclede Gas Co. v. Public Service Com'n*, 392 S.W.3d 24, 38 (Mo. App. 2012).

Decision

A finding of decisional prudence is not necessary to the Commission's decision regarding Evergy's proposed transportation electrification portfolio. Instead, it would be an advisory opinion that the Commission is not authorized to make. In addition, a finding of decisional prudence is not appropriate because there was insufficient evidence presented in this case to make such a determination, even if it were authorized by law. The parties cannot even agree on the number of existing EVs in Evergy's service territory. This is a problem because in this case there have been no definitive studies, just witnesses quoting from studies that they have read, but cannot fully explain. The arguments of the parties are full of deeply held beliefs, but with little empirical support. The record developed in this case should not be the basis for a finding of decisional prudence that would preclude a better supported consideration of these matters in a future case.

e. Should the Commission direct Evergy to allow site hosts at new Clean Charge Network sites to choose the EV charging hardware and network service provider and to set the prices paid by drivers?

88. ChargePoint recommends that Evergy allow the hosts of charging sites owned by Evergy's Clean Charge Network to choose the EV charging equipment and network service provider that is deployed from a list of vendors previously qualified by the utility.[111]

89. Further, ChargePoint recommends Evergy allow those hosts to establish the prices and pricing policies for EV charging services provided at the utility-owned chargers.[112]

[111] Wilson Rebuttal, Exhibit 900, Page 16, Lines 10-12.
[112] Wilson Rebuttal, Exhibit 900, Page 17, Lines 6-20.

90. Sierra Club's witness counters that hosts should not be at liberty to mark-up the price of electricity at customer-funded, utility-owned charging stations, nor to levy fees that result in drivers whose cars cannot charge as quickly paying more for the same amount of electricity as drivers whose cars can charge more quickly.[113]

91. Evergy's costs related to the Clean Charge Network are recovered from the customers that use the network to charge their EVs. Selection of the right hardware should be undertaken according to the same prudency considerations that would apply to any other utility investment. That would not be possible if site hosts were allowed to decide what type of charger should be installed.[114]

Conclusions of Law

There are no additional conclusions of law for this portion of this issue.

Decision

Evergy's Clean Charge Network is utility owned property for which Evergy recovers its costs and investment from the users of the system. ChargePoint proposes to make the network more compatible with a free market charging network by allowing site hosts to control the equipment installed at the site and to determine the rates to be charged to customers. That proposal would be inconsistent with the regulatory structure to which Evergy is subject. ChargePoint's recommended modifications are rejected.

[113] Baumhefner Surrebuttal, Exhibit 700, Page 24, Lines 8-11.
[114] Marke Surrebuttal, Exhibit 201, Page 9, Lines 6-13.

7. Should the Commission approve Evergy's proposed Customer Education and Program Administration proposal?

92. Evergy proposes to budget $1,100,000 over the five-year period of its portfolio program for education and program administration in the Evergy Missouri Metro service area. Similarly, it would budget $586,000 for the Evergy Missouri West service area.[115]

93. Evergy's education program will offer customer education to support EV adoption and encourage participation in Evergy's program offerings. Evergy will also offer technical assistance to help customers navigate EV-related decisions and to maximize the benefits of EV adoption.[116]

94. The customer education portion of the budget represents $750,000 of the total budget, with the remainder attributed to program administration costs.[117]

95. Evergy has not finalized the details of its education program because it intends to use the lessons learned from the pilot program to craft the educational offerings.[118]

96. Evergy typically fully develops education, marketing, and outreach plans after regulatory approval so as to understand the approved set of goals, objectives, and constraints.[119]

Conclusions of Law

There are no additional conclusions of law for this issue.

[115] Portfolio Filing, Exhibit 1, Appendix A.
[116] Portfolio Filing, Exhibit 1, Page 30.
[117] Voris Surrebuttal, Exhibit 7, Page 18, Lines 10-16.
[118] Transcript, Pages 179-180, Lines 13-25, 1-3.
[119] Voris Surrebuttal, Exhibit 7, Page 16, Lines 15-17.

Decision

The Commission believes customer education is important to the success of Evergy's program portfolio and the Commission will approve an appropriate budget for education about, and administration of, those programs. However, the budget amounts proposed by Evergy may no longer be appropriate given that the Commission has rejected substantial portions of that program. The Commission does not have sufficient information in the record to set a definite amount for the budget in this order. Instead, the Commission will simply direct Evergy to develop a reasonable education and administration budget, proportional to the programs approved in this order, keeping in mind that all spending for those purposes will be subject to a full regulatory review in a future rate case. Evergy shall prepare such a budget and file it in this case within 45 days following the effective date of this order. If any party wishes to challenge that budget they may do so by filing an appropriate pleading in this case within 30 days after Evergy files the budget.

8. Should the Commission approve Evergy's proposal to administer the new pilot rebate programs over a five-year period, beginning in the first quarter of 2022 and concluding in the first quarter of 2027, including periodic reporting to the Commission and stakeholders?

Findings of Fact

97. Evergy proposed to administer the pilot rebate programs over a five-year period beginning in the first quarter of 2022. However, Evergy also anticipated a three-month ramp-up period in 2021 to establish key processes, contracts, and operations before launching the pilot programs.[120]

[120] Portfolio Filing, Exhibit 1, Page 31.

98. Evergy proposes to record and report to the Commission quantitative and qualitative measures of the new pilot program's status.[121]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

Although several parties opposed nearly all of the programs proposed by Evergy as part of its portfolio, no party specifically objected to the five-year implementation period for those programs. The Commission will approve that five-year implementation period. Evergy proposed that the programs begin with the start of the first quarter of 2022, but also anticipated a three-month ramp-up period before the programs went into effect. The effective date of this report and order will not allow for sufficient time for the programs to take effect in the first quarter of 2022, so the Commission will authorize the programs to go into effect in the second quarter of 2022.

9. Should the Commission approve Evergy's request that the Commission authorize the Company to use a regulatory asset tracking mechanism to track and defer the pilot program costs that include rebate incentives and certain associated customer education and administrative costs as well as off-setting revenues?

Findings of Fact

99. Evergy asks the Commission to authorize it to use a regulatory asset tracking mechanism to track and defer the pilot program costs for recovery in a future rate case. Without such a deferral mechanism, Evergy would be unable to recover those costs through its next general rate case and between future rate cases during the five-year implementation period.

[121] Portfolio Filing, Exhibit 1, Page 31.

100. Staff opposes the implementation of the pilot programs proposed by Evergy, but if such programs are approved, it does not oppose the creation of a deferral mechanism as proposed by Evergy.[122]

101. In its initial brief, Public Counsel opposed the creation of a regulatory asset tracking mechanism as unnecessary. Public Counsel also contends that the Commission's authority to engage in deferral accounting and the establishment of regulatory assets and liabilities is limited to extraordinary events, and that Evergy's implementation of the pilot programs is not an extraordinary event.[123]

Conclusions of Law

U. Section 393.140(4), RSMo 2016 gives the Commission "power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by … electrical corporations…."

V. Section 393.140(8), RSMo 2016 gives the Commission "power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."

W. Missouri's courts have described an Accounting Authority Order as follows:

> A regulated utility's rates are established prospectively in periodic ratemaking proceedings, based on the utility's revenues and expenses during an earlier 'test year.' When a utility incurs extraordinary expenses (such as the construction of major capital improvements) outside of a 'test year,' those extraordinary expenses will not be reflected in rates (because the rates were established to allow the utility to recoup its ordinary expenses, as reflected in the 'test year'). An accounting authority order or 'AAO' permits a utility to capture those extraordinary expenses for (potential") recovery in the forward-looking rates to be established at a future rate case (even though the extraordinary expenses may occur outside the 'test year' utilized in that future rate case).[124]

[122] Staff Rebuttal Report, Exhibit 100, Page 32, Lines 4-5.
[123] Initial Brief of the Missouri Office of the Public Counsel, Page 80.
[124] *State ex rel. Aquila, Inc. v. Public Service Commission*, 326 S.W.3d 20, 27 (Mo. App. 2010).

Decision

Absent the establishment of some form of recovery mechanism to allow Evergy to recover the cost of implementing the portfolio of pilot programs that the Commission has approved in this order, Evergy would be unable to recover those costs that fall outside the test year established in future rate cases. If unable to recover its costs, Evergy might choose not to implement those programs. Under those circumstances, the Commission finds that these expenses and off-setting revenues are extraordinary and will authorize Evergy to use a regulatory asset tracking mechanism to track and defer the pilot program costs for recovery in a future rate case or rate cases.

a. Should the Commission approve the requested 5-year amortization timeframe requested as part of this case?

Findings of Fact

102. Evergy proposes that pilot program costs be amortized into its cost of service through an amortization period of five years.[125]

103. Staff does not oppose the creation of a deferral mechanism for the costs, but recommends that the amortization period for the deferred costs should be determined in a future rate case, not in this proceeding.[126]

104. Evergy responds that a five-year amortization period aligns the amortization with the length of the pilot program and should be established in this case.

Conclusions of Law

There are no additional conclusions of law for this sub-issue.

[125] Portfolio Filing, Exhibit 1, Page 32.
[126] Staff Rebuttal Report, Exhibit 100, Page 32, Lines 4-6.

Decision

The amortization period of the deferred costs under the deferral mechanism can best be determined in a future rate case when the deferred amounts are actually known. If the amount of dollars deferred is significant, a longer amortization period may be appropriate. If the amount of dollars deferred is less, a shorter amortization period may be appropriate. There is no reason the amortization period needs to match the length of the pilot program, although that period may be found to be reasonable when the matter is considered in a rate case. An amortization period will not be established in this case.

10. Should the Commission approve Evergy's requests for variance of subsections 20 CSR 4240-14.020(1)(B), (1)(D), and (1)(E) only as those subsections are applied to the pilot programs as described in any approved compliance tariffs resulting from this case?

Findings of Fact

105. Evergy requests a variance of three provisions of the Commission's rule regarding prohibited promotional practices. The variances are necessary to avoid inconsistencies with the customer incentives that are being approved in this order.

106. Staff indicates that to the extent the Commission does authorize any aspect of Evergy's request, the grant of a variance would be appropriate, but that the variances should only be as broad as necessary, and should be of limited duration.

Conclusions of Law

X. The relevant portions of the rules for which Evergy requests a variance are as follows:

> 20 CSR 4240-14.020 Prohibited Promotional Practices
> (1) No public utility shall offer or grant any of the following promotional practices for the purpose of inducing any person to select and use the service or use additional service of the utility:

> (B) The furnishing of consideration to any architect, builder, engineer, subdivider, developer or other person for work done or to be done on property not owned or otherwise possessed by the utility or its affiliates, …;
> (D) The furnishing of consideration to any dealer, architect, builder, engineer, subdivider, developer or other person for the sale, installation or use of appliances or equipment;
> (E) The provision of free, or less than cost or value, wiring, piping, appliances or equipment to any other person: ….

Y. Commission Rule 20 CSR 4240-14.010(2) provides that the Commission may grant variances from its promotional practices rule for good cause shown.

Decision

The Commission finds that Evergy has shown good cause for the granting of a variance from Commission Rule 20 CSR 4240-13.020(1)(B), (D), and (E). Such variance is granted only to the extent that those rule provisions would otherwise conflict with the pilot programs approved in this order. The granted variance will expire when the approved programs end.

THE COMMISSION ORDERS THAT:

1. The tariff sheets submitted on February 24, 2021, by Evergy, assigned Tariff Tracking Nos. JE-2021-0161 and YE-2021-0160 are rejected.

2. Evergy is authorized to file tariff sheets in compliance with this order.

3. Evergy shall develop a reasonable education and administration budget and file it in this case within 45 days following the effective date of this order. If any party wishes to challenge that budget they may do so by filing an appropriate pleading in this case within 30 days after Evergy files the budget.

4. Evergy is granted a variance from Commission Rule 20 CSR 4240-13.020(1)(B), (D), and (E). Such variance is granted only to the extent that those

rule provisions would otherwise conflict with the pilot programs approved in this order. The granted variance will expire when the approved programs end.

5. This report and order shall become effective on January 24, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Willie J. Harris Jr.,	)	
	)	
Complainant	)	
	)	**File No. WC-2021-0129**
v.	)	
	)	
Missouri-American Water Company,	)	
	)	
Respondent	)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§9. Particular kinds of evidence generally
§17. Photographs

Complainant's only evidence that his meter has not been changed is his testimony that he does not remember allowing anyone onto the property to change the meter in November of 2009. Complainant's witness's testimony is unsupportive as she is not certain whether they were visiting their St. Louis residence during Thanksgiving 2009. Missouri-American Water Company provided documentation that it changed Complainant's meter in 2009. Photos of Complainant's meter show that the meter is a Neptune meter and that the serial number matches the number Missouri-American Water Company provided in its meter change service order documentation.

§26. Burden of proof

The Commission is not confined to the issues proposed by the parties. The Commission's statutory mandate is to determine whether a utility subject to the Commission's jurisdiction has violated any provision of law subject to the Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission. A complainant should have their case heard when they can explain in practical terms the basis for the complaint.

§26. Burden of proof

The question before the Commission is not, what happened to the water, but whether Missouri-American Water Company violated any statute, rule, or tariff provision. Complainant did not provide sufficient evidence to support his assertion that, because the meter reading is high, Missouri-American Water Company incorrectly read his meter.

SERVICE

§37. Equipment

Missouri-American Water Company changes 5/8” meters, such as Complainant’s, every 15 years. This is not because of any statute, Commission rule, or Missouri-American Water Company tariff provision, but because of meter accuracy studies conducted by Missouri-American Water Company. There is no statute, Commission rule, or Missouri-American Water Company tariff provision that requires Missouri-American Water Company to replace meters on a particular schedule.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Willie J. Harris Jr.,	)	
	)	
Complainant	)	
	)	**File No. WC-2021-0129**
v.	)	
	)	
Missouri-American Water Company,	)	
	)	
Respondent	)	

REPORT AND ORDER

Issue Date: January 26, 2022

Effective Date: February 25, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Willie J. Harris Jr.,	)	
	)	
Complainant	)	
	)	**File No. WC-2021-0129**
v.	)	
	)	
Missouri-American Water Company,	)	
	)	
Respondent	)	

APPEARANCES

Appearing For Willie J. Harris Jr.:

Willie J. Harris Jr., 206 Topaz Lane, Horseshoe Bend, Arkansas 72512

Appearing for Missouri American Water Company:

Jennifer Hernandez and Dean L. Cooper, Brydon, Swearengen & England, PC, 312 East Capitol, Jefferson City MO 65102

Appearing for the Staff of the Missouri Public Service Commission:

Karen Bretz, Senior Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: John T. Clark

REPORT AND ORDER

Procedural History

On November 2, 2020, Willie J. Harris Jr. filed a complaint with the Commission against Missouri-American Water Company (MAWC). Mr. Harris alleges that MAWC (1) rendered erroneous bills and did not take actual meter readings in violation of Commission Rule 20 CSR 4240-13.020 and (2) has not changed his meter since 1987. Mr. Harris requests that his water service be reinstated at no charge, and without payment services and account charges accrued from May 3, 2019 through September 29, 2020. Mr. Harris' complaint did not specify an amount in dispute, but the Commission determined that the amount in dispute was less than $800. Accordingly, this complaint is being addressed under the small formal complaint procedures contained in Commission Rule 20 CSR 4240-2.070(15).

The Commission issued notice of the complaint, directed MAWC to file an answer, and directed the Commission's Staff (Staff) to file a report on the Complaint. MAWC filed an answer to Mr. Harris' complaint on December 11, 2020. The answer included a motion to dismiss the complaint for failure to state a claim to which the Commission could grant relief. MAWC's motion states that Mr. Harris' complaint does not cite a violation of statute, Commission regulation, or provision of Missouri-American's tariff. The Office of the Public Counsel (OPC) filed a pleading opposing MAWC's motion to dismiss, which pointed out that Mr. Harris did, in fact, cite a Commission Rule. Additionally, OPC asserts that even if a complainant does not cite to a particular law or tariff, residential customers should still have their cases heard when a complaint explains in practical terms the basis for the complaint. MAWC's motion to dismiss will be addressed in this Report and Order.

Staff filed a recommendation and memorandum detailing its investigation and analysis on February 4, 2021. Staff concluded that MAWC complied with its current approved tariff and Commission rules and regulations. Staff found no evidence explaining the high bill for the period of May 2, 2019 to August 1, 2019 or the high bill for the period of July 31, 2020 to September 29, 2020. Staff recommended that the Commission dismiss the complaint. Mr. Harris filed a response opposing Staff's recommendation. The Commission scheduled an evidentiary hearing for May 4, 2021.

Staff filed a list of issues for the Commission to determine on behalf of the parties, which set forth the following four issues for the Commission's determination:

1. Did MAWC fail to replace Mr. Harris' meter since 1987, in violation of statute, tariff, or rule?

2. Did MAWC estimate Mr. Harris' meter readings rather than take actual reads, in violation of statute, tariff, or rule?

3. Did MAWC incorrectly read Mr. Harris' meter, in violation of statute, tariff, or rule?

4. If MAWC violated any statute, tariff, or rule, should the remedy be a bill credit?

At the evidentiary hearing, the Commission heard the testimony of eight witnesses and received 35 exhibits onto the record. Tracie Figueroa, Business Service Specialist, testified for MAWC; and Debbie Bernsen, Customer Experience Analyst, and David Roos, Engineer, testified for Staff. Mr. Harris testified on his own behalf and offered the testimony of four additional witnesses: Bonita Harris, Cicely Tucker, Andre Tucker, and Anthony Bell.

Mr. Harris, Staff and MAWC filed post-hearing briefs. On June 24, 2021, the case was deemed submitted for the Commission's determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "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."

On January 7, 2022, the Commission issued notice of its Recommended Report and Order. Pursuant to Commission Rule 20 CSR 4240-2.070(15)(H), the parties had ten days to file comments supporting or opposing the Recommended Report and Order. Staff filed a response to the Recommended Report and Order. No other responses were received.

Staff suggests that the Commission remove references to meter testing from the Recommended Report and Order. Staff notes that Issue 1 only concerns replacement of Mr. Harris' meter, that Mr. Harris did not request that his meter be tested, that Mr. Harris did not allege a violation of the meter testing rule, and that without further evidence about the meter testing program the Commission should remove references to meter testing.

The Commission is not confined to the issues proposed by the parties. The Commission's statutory mandate is to determine whether a utility subject to the Commission's jurisdiction has violated any provision of law subject to the commission's authority, any rule promulgated by the commission, any utility tariff, or any order or decision of the commission. A complainant should have their case heard when they can explain in practical terms the basis for the complaint. Accordingly, the Commission listens to complaints with an open mind for any alleged violation. During the hearing Mr. Harris

stated: “They have never tested that meter, never, since I’ve been there.”[1] There is also discussion of meter testing by parties and party witnesses on the record. Staff’s brief discusses the fact that there is no meter replacement schedule in Missouri law, Commission’s rules, or MAWC’s tariff, but for that sentence cites that “MAWC is required to have a meter testing program, to be in compliance with 20 C.S.R. 4240-10.030(38).”[2] The Commission believes a sufficient basis exists for it to examine potential violations of its meter testing program rules in this case, even if there was insufficient evidence for the Commission to determine whether a violation occurred. Therefore, the Commission will not remove references to meter testing, will make minor changes to its conclusions of law and decision to clarify its decision.

Customer specific information is confidential under Commission Rule 20 CSR 4240-2.135(2); however, the Commission may waive this provision under Commission Rule 20 CSR 4240-2.135(19) for good cause. Good cause exists to waive confidentiality as to Mr. Harris’ bills and water usage because the Commission would be unable to write findings of fact or a decision that did not use some of Mr. Harris’ customer specific information. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the Commission’s decision.

Findings of Fact

On April 12, 2021, Staff filed a Stipulation of Undisputed Facts on behalf of the parties. The Commission finds the undisputed facts in the stipulation to be conclusively established. Those undisputed facts are incorporated where necessary.

[1] Transcript, p. 161.
[2] Post Hearing Brief of Staff, p.13.

1. MAWC is a public utility under the jurisdiction of the Missouri Public Service Commission.[3]

2. MAWC provides water service to about 470,000 customers in Missouri.[4]

3. Mr. Harris owns a residence in St. Louis that he purchased in 1990.[5]

4. Mr. Harris received residential water service at his St. Louis home from MAWC from 1990 until September 29, 2020.[6]

5. Mr. Harris purchased his Arkansas residence in 2005, and he and his wife have resided primarily in Arkansas since 2005.[7]

6. Mr. Harris continued water service to the St. Louis address because he periodically visits St. Louis and stays at the house.[8]

7. Mr. Harris generally visits the St. Louis residence for holidays, such as the 4th of July and Christmas, and also for funerals.[9]

8. Mr. Harris is billed on a quarterly basis.[10]

9. Mr. Harris receives his account statements at his St. Louis address.[11] Mr. Harris never requested that his home address be changed to Arkansas or that his billing statements be mailed to his Arkansas residence.[12]

10. Cicely Tucker, Mr. Harris' niece, gets Mr. Harris' account statements from his St. Louis residence and mails them to him in Arkansas.[13]

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[3] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[4] Transcript, p.455.
[5] Exhibit 1, Complaint.
[6] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[7] Exhibit 1, Complaint.
[8] Exhibit 101, Staff report.
[9] Transcript, p. 115.
[10] Transcript, p. 58.
[11] Transcript. p. 58.
[12] Transcript, p. 53.
[13] Transcript, p. 58.

11. Mr. Harris' St. Louis residence sits vacant most of the year.[14]

12. Ms. Tucker checks on the residence 3-4 times a month. During those visits Ms. Tucker checks the mailbox, checks to see that the doors are locked, walks around the outside of the house, and checks the inside. While she is there she will also flush the toilets if it appears they have dried up.[15] Ms. Tucker testified that she then waits for the toilet to refill and turns off the water at the wall connection.[16]

13. Mr. Harris visited his St. Louis residence from June 22, 2019, until June 29, 2019.[17]

14. Mr. Harris did not visit his St. Louis residence in 2020.[18]

15. On August 6, 2019, MAWC sent a letter to Mr. Harris' St. Louis address stating that it was aware of the high water usage at his home, and advising him to contact customer service if he was unable to determine the reasons for the high usage. A second letter similar to the first was sent to Mr. Harris' St. Louis address on August 7, 2019.[19]

16. Mr. Harris' niece informed him of the high water usage letter.

17. One billing unit is equivalent to 100 gallons.[20]

18. MAWC's read of Mr. Harris' meter for May 2, 2019, was 126 units.[21]

19. MAWC's read of Mr. Harris' Meter for August 1, 2019, was 583 units.[22]

20. On August 6, 2019, MAWC sent Mr. Harris a water bill for $1,866.12 for

[14] Exhibit 1, Complaint.
[15] Transcript, p. 204-207.
[16] Transcript, p. 219-220.
[17] Transcript, p. 118, and Exhibit 1, Complaint and attachments, October 12, 2019 letter to MAWC.
[18] Transcript, p. 119.
[19] Exhibit 101, Staff Report.
[20] Exhibit 103, billing statements.
[21] Exhibit 106, meter reads.
[22] Exhibit 106, meter reads.

use of 457 units of water (341,836 gallons) (583 units – 126 units = 457 units).[23]

21. Mr. Harris' nephew checked the meter on September 6, 2019, the meter read 584.5 units.[24]

22. Mr. Harris believes that the meter readings were incorrect because his meter read 126 units on May 2, 2019 and 583 units on August 1, 2019.[25]

23. On September 20, 2019, Mr. Harris first contacted MAWC by telephone about the high water bill.[26]

24. Mr. Harris and a MAWC representative met at Mr. Harris' home on October 18, 2019. During this meeting, the MAWC representative obtained an actual read of Mr. Harris' meter.[27]

25. On November 1, 2019, MAWC applied a courtesy adjustment of $1,822.19 to Mr. Harris' account balance, which at that time was $1,929.94. After the $1,822.19 adjustment was made, Mr. Harris' account had a balance of $107.75. MAWC appropriately calculated this adjustment utilizing past usage at the same time last year and the appropriate rates.[28]

26. Mr. Harris did not pay that bill. Mr. Harris' last payment on his account was July 9, 2019. This was for water service received and service charges accrued during the prior quarter, which ran from February 5, 2019 through May 2, 2019.[29]

27. Mr. Harris' testified that he did not pay the bill because he questioned

[23] Exhibit 103, billing statements and Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[24] Exhibit 1, Complaint and attachments, October 12, 2019 letter to MAWC.
[25] Transcript, p. 78.
[26] Transcript, p. 303.
[27] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[28] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[29] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

MAWC's ability to read his meter and be honest with him.[30]

28. Even though he did not pay his bill, Mr. Harris continued to receive water service at his St. Louis residence until September 29, 2020.[31]

29. MAWC disconnected Mr. Harris' service on September 29, 2020 for nonpayment.[32]

30. As of October 30, 2020 Mr. Harris' MAWC balance is $759.76 for water he received from May 2019 through September 2020.[33]

31. Mr. Harris never requested that MAWC test his meter. Mr. Harris testified that he did not get his meter tested because he knew that MAWC was targeting him and had fabricated his billing charges.[34]

32. Mr. Harris contends that meter ID number 87918668 was in the house when Mr. Harris purchased it.[35]

33. Mr. Harris provided photographs of his meter, which bears serial number 87918668.[36]

34. Mr. Harris claims his meter has not been changed since 1987.[37]

35. MAWC does not have any information for Mr. Harris' meter prior to 1987.[38]

36. Mr. Harris' meter was replaced on March 24, 1987, and that prior to its replacement its meter ID number was 199662017.[39]

[30] Transcript, p. 61.
[31] Transcript, p. 60.
[32] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[33] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[34] Transcript, p. 162.
[35] Transcript, p. 30.
[36] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[37] Transcript, p. 50-51.
[38] Exhibit 101, Staff Report.
[39] Exhibit 101, Staff Report.

37. A Neptune water meter, ID number 87918668, was set on November 30, 2009.[40]

38. Ms. Harris did not believe that she and Mr. Harris were in St. Louis during Thanksgiving 2009 but she was not certain.[41]

39. MAWC's service order shows that they replaced Mr. Harris' meter in 2009.[42]

40. MAWC contacted Mr. Harris about installing Advanced Metering Infrastructure (AMI) on his meter in January 2018, and continued to try to contact him about installing AMI during the summer and fall of 2019.[43]

41. MAWC attempted to upgrade Mr. Harris' meter to an AMI meter but were unable to schedule an appointment during a time satisfactory to Mr. Harris.[44]

42. AMI would have allowed MAWC to determine the exact time period that water was being used at Mr. Harris' St. Louis residence, and how much water was being used.[45]

43. Mr. Harris' provided the serial number on his meter and that serial number matched the serial number in MAWC's documentation.[46]

44. Neptune meters are guaranteed to read accurate for 15 years.[47]

45. MAWC determined that 15 years was the appropriate replacement time period for 5/8-inch meters based on the results of a 1990 meter study.[48]

[40] Exhibit 200, and Transcript, p. 359.
[41] Transcript, p. 268-269.
[42] Exhibit 204, Service order record.
[43] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[44] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[45] Transcript, p. 409-410.
[46] Exhibit 204, service order, and Exhibit
[47] Transcript, p. 377.
[48] Transcript p. 452, and Exhibits 200, Affidavit of Tracie Figueroa, and 303, 1990 study.

46. MAWC uses a service period of 15 years for 5/8-inch meter replacements.[49]

47. Mr. Harris' meter was to be replaced on this 15 year schedule.[50]

48. Mr. Harris provided no credible evidence that MAWC had not changed his meter since he purchased the St. Louis residence.

49. Mr. Harris' water meter is located inside his home and a wire runs from the meter to a touchpad outside his home. A technician must walk to the touchpad and physically touch the touchpad with a handheld reader to take a reading. The handheld reader registers the reading of the meter inside the home.[51]

50. MAWC does not need to access Mr. Harris' basement to read his meter.[52]

51. The touchpad was installed on November 30, 2009, at the same time as the meter installation.

52. Mr. Harris testified that MAWC knew what was on the meter in his basement, but he did not understand how MAWC knew the reading on his meter without MAWC having been in his house.[53]

53. According to Mr. Harris' billing statements from February 2015 through October 2020, all readings were actual readings, and the meter serial number on the bills matches the meter serial number in Mr. Harris' photographs.[54]

54. MAWC's meters read cumulatively. Usage is determined by subtracting the prior reading from the current reading.[55]

[49] Exhibit 200, Affidavit of Tracie Figueroa.
[50] Transcript, p. 422.
[51] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[52] Exhibit 200, Affidavit of Tracie Figueroa.
[53] Transcript, p. 50.
[54] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[55] Transcript, p. 39.

55. Mr. Harris' meter read for his final bill from August 1, 2020, through October 7, 2020, was estimated to be the same as the actual meter read on September 29, 2020, when his service was disconnected.

56. Staff's table in page 5 of its Report of the Staff, dated February 4, 2021, accurately represents Mr. Harris' water usage used in quarterly MAWC billings rendered from May 2015 through October 2020. During this period Mr. Harris used between zero and five units[56] per quarter, with two exceptions. Other than these two exceptions, described below, Mr. Harris' usage is consistent with him not living in the home and visiting it occasionally.[57]

57. MAWC's last reading of Mr. Harris' meter was September 29, 2020 at the time his service was disconnected. According to this reading, Mr. Harris used 109 units (81,532 gallons) of water since the prior reading on July 31, 2020.[58]

58. Mr. Harris does not have a water leak at his house.[59]

Conclusions of Law

A. MAWC is a Missouri corporation and a "sewer corporation" and "public utility" as defined by Section 386.020, RSMo (Cum. Supp. 2020), and is authorized to provide water and sewer service to portions of Missouri.

B. Section 386.390, RSMo states that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

[56] A unit of water is equal to 100 cubic feet, or 748 gallons.
[57] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[58] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).
[59] Exhibit 307, Stipulation of undisputed facts (April 12, 2021).

C. Commission Rule 20 CSR 4240-10.030(38), requires that, unless otherwise ordered by the Commission, MAWC test 5/8-inch meters every ten years or 200,000 cubic feet of water, or as often as the results obtained may warrant to insure compliance with Commission Rule 20 CSR 4240.030(37).

D. Commission Rule 20 CSR 4240.030(37), provides that no water service meter shall be allowed in service which has an incorrect gear ratio or dial train, is mechanically defective, or shows an error in measurement in excess of five percent when registering water at stream flow equivalent to approximately 1/10 and full normal rating under the average service pressure.

E. Complainant bears the burden of proof to show by a preponderance of evidence that MAWC has violated a law subject to the Commission's authority, a Commission rule, or an order of the Commission.[60]

Decision

Issue 1 – Did MAWC fail to replace Mr. Harris' meter since 1987, in violation of statute, tariff, or rule?

MAWC contends that it changed the meter at Mr. Harris' St. Louis residence on November 30, 2009. Mr. Harris contends that MAWC has not changed his meter since 1987. Mr. Harris' only evidence that his meter has not been changed is his testimony that he does not remember allowing anyone onto the property to change the meter in November of 2009. Mrs. Harris' testimony is unsupportive as she is not certain whether they were visiting their St. Louis residence during Thanksgiving 2009. MAWC has

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

provided documentation that it changed Mr. Harris' meter in 2009. Photos of Mr. Harris' meter show that the meter is a Neptune meter and that the serial number 87918668 matches the number MAWC provided in its meter change service order documentation.

MAWC changes 5/8 meters, such as Mr. Harris', every 15 years. This is not because of any statute, Commission rule, or MAWC tariff provision, but because of meter accuracy studies conducted by MAWC. MAWC has a meter testing program in compliance with Commission Rule 20 C.S.R. 4240-10.030(38). Mr. Harris never asked MAWC to test his meter, and he has not alleged a violation of the meter testing rules. However, it is worth noting that if Mr. Harris' meter was replaced in 1987 and again in 2009, then it should have been tested no later than 1997. No evidence was presented regarding whether the meter was tested in 1997, other than Mr. Harris testifying than no MAWC workers had been in his residence. Accordingly, insufficient evidence was presented for the Commission to determine any violation of its meter testing rules.

There is no statute, Commission rule, or MAWC tariff provision that requires MAWC to replace meters on a particular schedule. The evidence shows that MAWC changed Mr. Harris' meter in 2009. Even if MAWC had not replaced Mr. Harris' meter, there would be no violation of statute, Commission rule, or MAWC tariff provision.

Issue 2 – Did MAWC estimate Mr. Harris' meter readings rather than take actual reads, in violation of statute, tariff, or rule?

Mr. Harris alleged that MAWC estimated his usage in violation of Commission rule 20 C.S.R. 4240-13.020, which requires that utility render bills based on actual readings. Mr. Harris' meter is read via a touchpad on the outside of his residence. MAWC does not need access to the inside of Mr. Harris' residence to read his meter. All of the billing

statements submitted in this case, with the exception of the October 7, 2020 bill, indicated that the meter readings were actual reads. Mr. Harris testified that MAWC knew what was on the meter in his basement, but he did not understand how MAWC knew the reading on his meter without MAWC having been in his house. Mr. Harris' final bill was estimated because it was a week after disconnection, and the assumption was that the meter would read the same as when it was disconnected. Therefore, Mr. Harris was not billed for any estimated usage, and there was no violation of a law subject to the Commission's authority, a Commission rule, Commission order, or MAWC tariff provision.

Issue 3 – Did MAWC incorrectly read Mr. Harris' meter, in violation of statute, tariff, or rule?

Mr. Harris alleges that his meter was read incorrectly. Mr. Harris speculates that the meter readings were incorrect because his meter read 126 units on May 2, 2019 and 583 units on August 1, 2019. Because meters read cumulatively, having a read of only 126 units in May 2019 is also supportive of MAWC having replaced the meter in 2009. Testimony indicates that if Mr. Harris had allowed AMI to be installed on his meter he would have been able to narrow down the time period and flow rate for the higher use. This information could have been helpful in determining what was causing the high water usage. Additionally, if Mr. Harris had asked or allowed MAWC to perform a meter test it might have been possible to determine whether the meter was malfunctioning.

Staff and MAWC both speculated as to what might have caused the high water usage, but there is no way to know from the evidence presented. The question before the Commission is not, what happened to the water, but whether MAWC violated any statute,

rule, or tariff provision. Mr. Harris did not provide sufficient evidence to support his assertion that, because the meter reading high, MAWC incorrectly read his meter.

Issue 4 – If MAWC violated any statute, tariff, or rule, should the remedy be a bill credit?

Mr. Harris has failed to produce evidence sufficient to satisfy his burden to demonstrate that MAWC has violated any statute, rule, or tariff provision. Therefore the Commission need not address any remedies.

THE COMMISSION ORDERS THAT:

1. Mr. Harris' complaint is denied. MAWC may proceed with Mr. Harris' account consistent with the law, the company's tariffs, and the Commission's rules.

2. MAWC's motion to dismiss is moot.

3. This Report and Order shall become effective on February 25, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Union Electric Company	)	**File No. ER-2021-0240**
d/b/a Ameren Missouri's Tariffs to Adjust its	)	Tracking Nos. YE-2021-0175
Revenues for Electric Service	)	and YE-2022-0076

REPORT AND ORDER

RATES

§3. Jurisdiction and powers of the State Commission

Where a decision of the Commission rests on the exercise of regulatory discretion, a reviewing court will not substitute its judgment for that of the Commission, particularly on issues within its area of expertise.

§20. Costs and expenses

The rationale of the prohibition on single issue rate making is to prevent the Commission from permitting a utility to raise rates to cover increased costs in one area without considering counterbalancing savings in another area. That rationale does not apply to rates being applied to new services for which a rate has not previously been in effect.

§118. Method of allocating costs

Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying "[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Adjust its Revenues for Electric Service	)))	**File No. ER-2021-0240** Tracking Nos. YE-2021-0175 and YE-2022-0076

REPORT AND ORDER

Issue Date: February 2, 2022

Effective Date: February 12, 2022

TABLE OF CONTENTS

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CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History

On March 31, 2021, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or "the Company") filed tariff sheets designed to implement a general rate increase for electric service. As filed, the tariff sheets would have increased Ameren Missouri's annual electric revenues by approximately $299 million, which amounts to a twelve percent increase in its overall revenue requirement.

The Commission suspended Ameren Missouri's general rate increase tariff sheets until February 28, 2022, the maximum amount of time allowed by the controlling statute.[1] The following parties filed applications and were allowed to intervene: Midwest Energy Consumers Group (MECG); Missouri Industrial Energy Consumers (MIEC); Renew Missouri Advocates d/b/a Renew Missouri; Legal Services of Eastern Missouri, Inc.; Consumers Council of Missouri; Sierra Club; and the Natural Resources Defense Council.

The Commission established the test year for this case as the 12-month period ending December 31, 2020, trued-up for known and measurable revenue, rate base, and expense items through September 30, 2021. The Commission also established a procedural schedule leading to an evidentiary hearing.

During the week of October 5 to October 8, 2021, the Commission held five local public hearings. The local public hearings were held by WebEx, an audio and visual teleconferencing application. During the local public hearings the Commission heard from members of the public and also received numerous written comments.

[1] Section 393.150, RSMo (2016). (All statutory references are to the Revised Statutes of Missouri 2016, unless otherwise noted.)

The parties prefiled direct, rebuttal, and surrebuttal testimony, as well as true-up direct testimony. On November 24, 2021, before the start of the evidentiary hearing, the parties filed a unanimous stipulation and agreement that resolved all issues in the case related to Ameren Missouri's revenue requirement. On December 6, 2021, the parties filed a second unanimous stipulation and agreement that resolved certain additional issues. Both stipulations and agreements were approved by the Commission on December 22, 2021, in an order that became effective on January 4, 2022. The Commission need not further address the issues that were resolved in the approved stipulations and agreements.

The evidentiary hearing to address the issues that were not resolved by the stipulations and agreements was conducted on December 9, 2021. The parties filed post-hearing briefs on December 28, 2021, and reply briefs on January 7, 2022.[2] This Report and Order addresses those remaining issues.

Pending Motions:

(1) On January 7, 2022, the Commission's Staff (Staff) filed, along with its reply brief, a motion asking the Commission to strike a statement from the initial brief filed by MECG. Staff argues a statement in MECG's brief that asserts the parties failed to reach a settlement addressing the method for allocating revenue in this case due to the unwillingness of Staff and Public Counsel to address what MECG describes as a "lingering residential subsidy," should be struck as "impertinent, irrelevant, lacking in any evidentiary basis, and highly prejudicial." Staff's motion further asserts that settlement

[2] The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).

agreements are privileged and inadmissible as evidence under Commission Rule 20 CSR 4240-2.090(7). No party responded to Staff's motion.

Commission Rule 20 CSR 4240-2.090(7) does indeed provide that facts disclosed in settlement negotiations and settlement offers are privileged and are not to be used against participating parties unless fully substantiated by other evidence. However, the challenged statement in MECG's brief does not disclose or otherwise rely on any settlement offers or facts disclosed in settlement negotiations. Instead, it simply attempts to place blame for the failure to reach a settlement on Staff and Public Counsel. That attempt at finger-pointing is a particularly ineffective argument, but it does not violate the provisions of Commission Rule 20 CSR 4240-2.090(7). Staff's motion to strike will be denied.

(2) MIEC filed a single post-hearing brief on January 18, 2022, substantially after reply briefs were to be filed on January 7, 2022. Along with its brief, MIEC filed a motion seeking leave to file that brief out of time. The motion explained that the delay in filing was cause by the severe illness of counsel and her family. No other party has responded to MIEC's motion. The late filing of MIEC's brief has not prejudiced any other party and the Commission will grant the motion to file that brief out of time.

General Findings of Fact

1. Ameren Missouri is an investor-owned electric utility providing retail electric service to large portions of Missouri.

2. Ameren Missouri served 1,286,072 customers at the time it filed its rate increase tariff.[3]

[3] Minimum Filing Requirements, Schedule 3.

3. The Office of the Public Counsel (Public Counsel) is a party to this case pursuant to Section 386.710(2), RSMo, and by Commission Rule 20 CSR 4240-2.010(10).

4. Staff is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

General Conclusions of Law

A. Ameren Missouri is a public utility, and an electrical corporation, as those terms are defined in Subsections 386.020(15) and (43), RSMo (Supp. 2020). As such, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. The Commission's subject matter jurisdiction over Ameren Missouri's rate increase request is established under Section 393.150, RSMo.

C. Section 393.150, RSMo, authorizes the Commission to suspend the effective date of a proposed tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

D. Ameren Missouri can charge only those amounts set forth in its tariffs.[4]

E. Subsection 393.140(11), RSMo, gives the Commission authority to regulate the rates Ameren Missouri may charge its customers for electric service.

F. Utilities are required to provide safe and adequate service.[5]

G. In determining the rates Ameren Missouri may charge its customers, the Commission is required to determine whether the proposed rates are just and reasonable.[6]

[4] Sections 393.130 and 393.140, RSMo.
[5] Sections 393.130 and 393.140, RSMo.
[6] Section 393.150.2, RSMo.

H. Ameren Missouri has the burden of proving its proposed rates are just and reasonable, pursuant to Section 393.150.2, RSMo: "[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the … electrical corporation . . . ."

I. In order to carry its burden of proof, Ameren Missouri must meet the preponderance of the evidence standard.[7] In order to meet this standard, the Company must convince the Commission it is "more likely than not" that Ameren Missouri's proposed rate increase is just and reasonable.[8]

J. Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony."[9]

K. An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence.[10]

L. Where a decision of the Commission rests on the exercise of regulatory discretion, a reviewing court will not substitute its judgment for that of the Commission, particularly on issues within its area of expertise.[11]

[7] *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007).
[8] *Holt v. Director of Revenue, State of Mo*., 3 S.W.3d 427, 430 (Mo. App. 1999).
[9] *State ex rel. Public Counsel v. Missouri Public Service Com'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).
[10] *State ex rel. Missouri Office of Public Counsel v. Public Service Com'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).
[11] *State ex rel. Missouri Gas Energy v. Public Service Com'n*, 186 S.W.3d 376, 382 (Mo. App. 2005).

The Issues

The parties numbered the issues before the settlement of many of those issues in the stipulations and agreements. In their briefs, the parties continue to refer to the unsettled issues by their original numbers. For the clarity of this order, the unsettled issues have been renumbered sequentially. The original numbers are identified in [brackets].

1. [17] Residential Time-of-Use Rates

A. Should the Company be required to change the names of its Time-of-Use rate plans?

Findings of Fact:

5. The stipulation and agreement that resolved Ameren Missouri's previous rate case required the company to implement five rate schedules for residential service.[12] The five rate schedules offer customers a range of time-of-use options that offer varying load shift savings potentials.[13]

6. The five residential rate schedules are established in Ameren Missouri's current tariff.[14] The existing "Basic Service" rate, which Ameren Missouri has renamed the "Anytime Users" rate in its marketing materials, does not have any time of use features. "Daytime/Overnight Service" that Ameren Missouri has renamed "Evening/Morning Savers" rate, charges a slightly lower rate for usage during evening and nighttime hours. "Time of Use Service" that Ameren Missouri has renamed "Overnight Savers," includes a moderate price differential. "Time-of-Use Smart Savers," which Ameren Missouri has not renamed, features a larger pricing differential. Finally, "Ultimate

[12] Wills Direct, Exhibit 17, Pages 4-5, Lines 22-23, 1.
[13] Wills Direct, Exhibit 17, Page 5, Table 1.
[14] A list of the names of the residential rates is found in Ameren Missouri's tariff at Mo. P.S.C. No. 6, 3rd Revised Sheet No. 53.

Saver Service," which Ameren Missouri has not renamed, has a large price differential and includes a demand charge.[15]

7. Ameren Missouri proposes to change the names in its tariff to match the names it is using in its customer marketing materials.[16]

8. Staff, supported by Public Counsel, take issue with the names that Ameren Missouri has chosen for marketing its time-of-use rates. Staff and Public Counsel express concern that the names are not descriptive and portray the rate schedules as money-saving opportunities without describing the risk of bill increases that may result from the rates. Staff and Public Counsel recommend adoption of more objective or informative names for Ameren Missouri's use in education and promotional materials.[17]

9. Staff does not offer any specific alternative names for Ameren Missouri's rates, but suggests they be described by generic names such as rates A, B, C, D, and E, or 1, 2, 3, 4, and 5.[18] Public Counsel suggests the rates be named for colors.[19]

10. Neither Staff, nor Public Counsel had any specific concerns about Ameren Missouri's efforts to educate customers about time-of-use rates aside from their choice of names and an admonition to adopt less marketing and more education,[20] and Public Counsel's witness, Dr. Geoffrey Marke, acknowledged at the hearing that Ameren Missouri has done a "pretty good job" in their marketing.[21]

[15] The residential rate plans are summarized at Wills Direct, Exhibit 17, Page 5, Table 1.
[16] Wills Direct, Exhibit 17, Page 5, Footnote 2.
[17] Staff Report, Class Cost of Service, Exhibit 205, Page 53, Lines 5-11.
[18] Transcript, Page 285, Lines 15-25.
[19] Marke Rebuttal, Exhibit 402, Pages 22-23, Lines 24-25, 1-5
[20] Transcript, Page 282, Lines 18-21.
[21] Transcript, Page 267, Lines 9-10.

11. Time-of-use rates may allow customers to save money on their electric bill by charging higher rates during on-peak usage times, and lower rates during off-peak usage times. Customers who adjust their electric usage to avoid on-peak (high rate) periods may save money. Conversely, customers who adopt a more aggressive time-of-use rate, but who do not adjust their electric usage could incur a higher electric bill.[22]

12. Most Ameren Missouri customers are currently served through an Automated Meter Reading (AMR) meter. All such customers are served at the Basic/Anytime User rate, which does not have a time-of-use component. Ameren Missouri is in the process of replacing its AMR meters with Advanced Metering Infrastructure (AMI) meters, which will have the capability of supporting a time-of-use rate. Once a customer has an AMI meter, they will be defaulted into the Evening/Morning Savers rate after six months. Each customer also has the choice to opt into any of the time-of-use rates, or go back to the Basic/Anytime User rate at any time after their AMI meter is installed.[23]

13. Customers who are asked to choose between these rates are given much more than just the name of the programs to help them decide which rate is best for them. Ameren Missouri witness, Steven M. Wills, described the customer educational process in his direct testimony. Customers will receive multiple educational materials, including descriptions of the available rates both before and after the installation of an AMI meter. At five months after installation, customers will get a mailer that includes a customized bill comparison to illustrate the potential impacts of the various time-of-use rates on their bill

[22] Wills Direct, Exhibit 17, Pages 5- 6, Lines 9-10, 1-5.
[23] Wills Direct, Exhibit 17, Page 7, Lines 1-7.

given their own historical consumption pattern. They will also receive a tear-off postcard that will allow them to opt out of defaulting to the Evening/Morning Savers rate if they are not comfortable making a change at that time. At month six, the customer will receive a bill insert notifying them that their next bill will be on the Evening/Morning Savers rate, and again directing them to the Company's website for options to select another rate if they prefer to do so.[24]

14. The choice of names for Ameren Missouri's time-of-use rates is important to encourage customers to explore the use of such rates with a goal of saving money on their electric bill by consuming less when electric costs are high, and more when those costs are low. The notion of saving money on their electric bill is key to getting customers to undertake the required behavior modifications.[25] Generic names, as proposed by Staff and Public Counsel, do not attract customers to time-of-use rates since they do not suggest a savings opportunity for customers. Unless the time-of-use rates have attractive names, few people will adopt them and the very purpose of deploying time-of-use rates will be defeated.[26]

15. At the time of the hearing, Ameren Missouri had 201,474 customers on the Evening/Morning Savers rate, 248 customers on the Overnight Savers rate, 157 on the Smart Savers rate, and 143 on the Ultimate Saver rate.[27] At that time, 29,732 Ameren Missouri customers with an AMI meter had opted to return to the Basic Service/Anytime User rate.[28]

[24] Wills Direct, Exhibit 17, Pages 10-11, Lines 7-21, 1-8.
[25] Faruqui Rebuttal, Exhibit 73, Page 4, Lines 1-5.
[26] Faruqui Rebuttal, Exhibit 73, Page 5, Lines 18-22.
[27] Transcript, Page 295, Lines 3-17.
[28] Transcript, Page 298, Lines 12-21.

16. Customers who have received AMI meters and the subsequent rate educational materials have started to learn the rate options by name. Renaming the rate options at this time would create confusion and would set back the company's rate education efforts.[29] Changing names would also require retraining of call center and other Ameren Missouri employees that have already been educated about the time-of-use rate options.[30]

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri has implemented residential time-of-use rates and it has chosen names for those rates with an eye to encouraging its customers to thoughtfully consider whether taking service under a time-of-use rate is in their best interest. In doing so, the company has chosen names that suggest that customers may be able to save money on their electric bill through a time-of-use rate. The Commission has encouraged Ameren Missouri to offer these rates and continues to believe that time-of-use rates will benefit both Ameren Missouri and its customers. The Commission wants Ameren Missouri's customers to sign up for appropriate rates. The concerns expressed by Staff and Public Counsel about the names Ameren Missouri has chosen to use to describe its existing time-of-use rates appear to be misplaced.

The Commission certainly agrees that Ameren Missouri needs to undertake a serious educational program to explain the operation of those rates to customers who will need to decide which rate will work best for them. Fortunately, there is no indication that

[29] Wills Rebuttal, Exhibit 18, Page 46, Lines 7-12.
[30] Wills Rebuttal, Exhibit 18, Page 49, Lines 5-8.

Ameren Missouri has failed to do so. Instead, Ameren Missouri has a solid plan in place to educate its customers about their choices and the potential risks and rewards associated with the various time-of-use rates. Customers are provided with extensive information about which plan may be right for their household and there is no reason to believe that they will be misled by a descriptive name attached to those plans.

Staff's brief points out that Ameren Missouri did not seek approval from the Commission before deciding to use modified names for its tariffed rates in its communications with its customers about its time-of-use rates. Staff does not cite any provision of law that would require Ameren Missouri to take either step before communicating those alternative names to its customers. Furthermore, requiring Ameren Missouri to change the names it has assigned to its time-of-use rate at this time would require it to revamp its educational materials, retrain its employees, and once again explain their options to its customers. Such a change would add expense and foster confusion. The Commission will not require Ameren Missouri to rename its time-of-use rates.

2. [22] Class Cost of Service, Revenue Allocation, and Rate Design

A. [C] How should any rate increase be allocated to the several customer classes?

Findings of Fact:

17. Ameren Missouri's cost to serve its customers is not the same for all those customers. That cost can vary significantly between customers depending upon the facilities required to serve that customer and the nature of their use of the electric

system.[31] Both the total quantity of electricity used over time by a customer - the amount of "energy" used by the customer, measured in kilowatt-hours (kWh) - and the rate the customer uses that electricity - the "demand", measured in kilowatts (kW) – vary significantly between customers.[32]

18. It would not be practical for Ameren Missouri to determine the cost of providing service to each individual customer, so customers are divided into various customer classes for the purpose of establishing rates. Ameren Missouri currently serves the following rate classes of customers:

- Residential or 1(M);
- Small General Service or 2(M);
- Large General Service or 3(M);
- Small Primary Service or 4(M);
- Street and Outdoor Lighting;
    - Company-Owned or 5(M)
    - Customer-Owned or 6(M)

and

- Large Primary Service or 11(M).[33]

19. The Residential class is comprised of customer homes. On average, a home would have a demand of around 5 kW. The Small General Service class includes any non-residential account whose maximum demand is less than 100 kW, which means a small business such as a small office or retail outlet. The Large General Service class

[31] Hickman Direct, Exhibit 30, Page 5, Lines 11-13.
[32] Brubaker Direct, Exhibit 500, Pages 4-5, Lines 24-25, 1-2.
[33] Hickman Direct, Exhibit 30, Page 6, Lines 5-9.

includes larger businesses with a demand over 100 kW, such as a grocery store or larger chain store. The Small Primary Service class includes customers who take service at a higher voltage than the Large General Service class, but at a similar demand. It would include larger commercial and industrial customers. The Large Primary Service class includes large commercial and industrial customers who take service at a higher voltage with over 5 megawatts of demand.[34]

20. In order to better determine the cost for Ameren Missouri to serve each customer class, several parties presented Class Cost of Service Studies. Ameren Missouri presented a Class Cost of Service Study, performed by Thomas Hickman.

21. Generation (production) plant comprises more than half of Ameren Missouri's total plant investment. For allocation of that investment, Ameren Missouri used the 4 NCP (non-coincident peak) version of the A (average) & E (excess) demand methodology.[35]

22. Ameren Missouri's Class Cost of Service Report showed that the Residential class was providing somewhat less than its indicated share of Ameren Missouri's revenue and that the Large Primary Service class was providing somewhat more than its share of revenue.[36]

23. The approved stipulations and agreements in this case will result in an 8.81 percent rate increase for all rate classes if allocated on an equal percentage basis.[37] If the rate for the Residential class were to be increased to its cost of service under Ameren Missouri's Class Cost of Service Study, it would need to be increased by a total of

[34] Transcript, Pages 305-307.
[35] Hickman Direct, Exhibit 30, Page 19, Lines 5-8.
[36] Hickman Direct, Exhibit 30, Page 2, Table 1.
[37] Transcript, Page 331, Lines 9-11.

approximately 17.2 percent.[38] In contrast, if the Large Primary Service class were to be fully moved to its cost of service under Ameren Missouri's Class Cost of Service Study its rates would be reduced by 3 percent.[39]

24. Ameren Missouri does not propose to adjust its rates to address that discrepancy. Instead, Ameren Missouri proposes to make a small revenue-neutral adjustment within the Customer-Owned Lighting class to address a large disparity in the revenues collected from that lighting class. Aside from that adjustment, Ameren Missouri would allocate the necessary rate increase to all customer classes on an equal percentage basis.[40]

25. MIEC presented a Class Cost of Service Study performed by its witness. Maurice Brubaker. Like Ameren Missouri's study, MIEC's Class Cost of Service Study also used a 4 NCP A&E method.[41] MIEC's study differs in some details from that presented by Ameren Missouri,[42] but like Ameren Missouri, MIEC found that the residential class was below the system average rate of return, while the Large Primary Service class was currently producing an above system-average rate of return. According to MIEC's Class Cost of Service Study, the Residential class would require an increase of 7.8 percent, above the overall rate increase, to move to its mathematical cost of service. All the other classes would receive a rate decrease, before being offset by the overall rate increase. The Large Primary Class would require the largest rate decrease of 10.8 percent to move to its cost of service.[43]

[38] Transcript, Page 331, Lines 12-17.
[39] Transcript, Pages 330-331, Lines 22-25, 1-2. *Describing*, Harding Direct, Exhibit 44, Page 5, Table 2.
[40] Harding Direct, Exhibit 44, Pages 5-6, Lines 8-13, 1-2.
[41] Brubaker Direct, Exhibit 500, Page 27, Lines 23-24.
[42] Brubaker Direct, Exhibit 500, Pages 31-35
[43] Brubaker Direct, Exhibit 500, Page 40, Lines 1-13.

26. Unlike Ameren Missouri, MIEC does not advocate for an across-the-board equal percentage revenue percentage increase. Rather MIEC recommends all classes be moved 50 percent toward their calculated cost of service.[44] Under MIEC's proposal, using the results of Ameren Missouri's Class Cost of Service Study, the Residential class would receive an additional increase of 4.1 percent on top of the overall 8.8 percent increase for a total increase of 12.9 percent. The Large Primary rate class would receive a rate decrease of 5.3 percent to reach its cost of service, subtracted from the overall 8.8 percent increase resulting in a net rate increase of only 3.5 percent.[45]

27. MECG presented a Class Cost of Service study prepared by its witness Steve Chriss. MECG also proposed to use a 4 NCP A&E allocation method, with results closely resembling the results of Ameren Missouri's study.[46]

28. MECG urges the Commission to allocate the rate increase among the rate classes in a way that moves all classes closer to their class cost of service. Specifically, MECG advocates the Commission apply half the difference between the approved revenue requirement and the revenue requirement requested by Ameren Missouri in its initial tariff filing to reduce the current over-class-cost-of-service-rates for the larger rate classes, with the other half being used to reduce the rate of all rate classes equally.[47]

29. Staff presented a Class Cost of Service Study prepared by its witness, Sarah Lange. Staff's study concluded that most rate classes were generally contributing appropriately to Ameren Missouri revenue requirement within a reasonable range and

[44] Brubaker Direct, Exhibit 500, Schedule MEB-COS-6.
[45] Brubaker Surrebuttal, Exhibit 502, Schedule MEB-COS-SUR-2.
[46] Chriss Direct, Exhibit 750, Page 21, Lines 2-8.
[47] Chriss Direct, Exhibit 750, Pages 27-28, Lines 10-19, 1-3.

that application of a system-average rate increase to all rate classes would be appropriate.[48]

30. As MECG explains in its brief, what it describes as the "residential subsidy" whereby the Residential class contributes less than its calculated cost of service, is not a new situation. The Commission has taken steps in the last seven Ameren Missouri rate cases to move the classes closer to their calculated cost of service.[49] In the last rate case in particular, which resulted in a rate reduction for Ameren Missouri, the larger rate classes were provided more favorable rate treatment than were the Residential and Small General Service rate classes, meaning the larger classes received a larger rate reduction than did the smaller classes.[50]

31. A table presented on page 23 of MECG's witness Steve Chriss' direct testimony shows the rate of return percentage calculated for the Large General Service and Small Primary Service rate classes going back to Ameren Missouri's 2007 rate case, ER-2007-0002.[51] That table also shows the rate of return index value for those rate classes in each rate case. As Chriss explained at the hearing, the rate of return index value is the relationship of the rate of return for a particular rate class compared to the company's total rate of return. Parity of the two would be an index value of 1.00. Values above 1.00 would indicate the rate class is subsidizing other classes. Values below 1.00 would indicate the class is being subsidized.[52] The rate of return index value for the

[48] Staff Report Class Cost of Service, Exhibit 205, Page 46, Lines 7-11.
[49] Initial Post hearing Brief of Midwest Energy Consumers Group, Pages 21-22. The rate cases are: ER-2019-0335; ER-2016-0179; ER-2014-0258; ER-2012-0166; ER-2011-0028; ER-2010-0036; and ER-2008-0318.
[50] Transcript, Pages 369-370, Lines 4-25, 1-17.
[51] Chriss Direct, Exhibit 750, Page 23, Table 5.
[52] Transcript, Pages 394-395, Lines 17-25, 1-3.

present case is shown as 1.54, which is the lowest index value on the chart going back to 2007.[53]

32. The class cost of service studies presented by the various parties are simply a "snap-shot" in time showing cost of service that the time they were prepared. They do not indicate whether any disparities in rate of return collected from the rate classes will grow or decrease in the future.[54]

33. The various class cost of service studies are only the starting point for the Commission's decision about allocation of the rate increase among the rate classes. Other factors, such as rate stability and public acceptance must also be considered.[55] Such studies are a guide for setting rate class revenue requirements but should not be solely relied upon to set those requirements.[56]

34. Recent years have been difficult for low-income members of the Residential class. The on-going COVID-19 pandemic and its attendant economic disruptions have hurt many Missouri households, and access to affordable household energy is essential for maintaining good health.[57]

35. In 2020, more than 69,000 Missouri households lived below 200 percent of the Federal Poverty Level. That number will likely increase in 2021 reflecting the impact of the pandemic.[58] Low-income households pay an average of 46 percent of their gross income toward housing and energy costs. Households at 50 percent of the Federal

[53] Transcript, Page 395, Lines 8-14.
[54] Transcript, Page 336, Lines 10-15.
[55] Harding Direct, Exhibit 44, Page 6, Lines 10-13.
[56] Staff Report, Class Cost of Service, Exhibit 205, Page 47, Lines 3-6.
[57] Hutchinson Direct, Exhibit 700, Page 4, Lines 7-19.
[58] Hutchinson Direct, Exhibit 700, Page 6, Lines 13-15.

Poverty Level may pay up to 54 percent of their income just for energy.[59] In addition, inflation has surged in 2021, and is at a 30-year high.[60]

36. In light of these facts, Public Counsel suggested that if the Commission did not order an equal percentage increase for all rate classes, it could choose to cap the increase for the Residential class at 5 percent and at 7.1 percent for the Small General Service class.[61] Such a cap would require an increase in the rates paid by the other classes of roughly 15 percent.[62]

37. Ameren Missouri's election of Plant-In-Service-Accounting under Section 393.1400, RSMo, subject it to a rate cap provision that restricts its rates from rising more than a specified compound annual growth rate for all customers, with a separate, lower compound annual growth rate applicable to just the Large Primary Service class.[63] Those rate caps will not be reached in this case.[64]

Conclusions of Law:

M. Section 393.130, RSMo 2016 states;

> No … electrical corporation … shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

[59] Hutchinson Direct, Exhibit 700, Page 6, Lines 19-21.
[60] Marke Rebuttal, Exhibit 402, Page 12, Line 8.
[61] Initial Brief of the Office of the Public Counsel, Page 7.
[62] Transcript, Pages 265-266, Lines 9-25, 1-3.
[63] Wills Direct, Exhibit 17, Page 49, Lines 10-17.
[64] Transcript, Page 304, Lines 15-17.

In interpreting that statute more than 90 years ago, the Missouri Supreme Court said: "[R]ates or charges to be valid must not be unjust, unreasonable, unjustly discriminatory, or unduly preferential."[65]

N. The Commission has much discretion in determining the theory or method it uses in determining rates[66] and can make pragmatic adjustments called for by particular circumstances.[67]

O. Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying "[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."[68]

P. For an electrical corporation that has elected to Plant-In-Service-Accounting (PISA) under Section 393.1400, RSMo, (as has Ameren Missouri) Section 393.1655.6, RSMo, provides that:

> If the difference between (a) the electrical corporation's class average overall rate at any point in time while this section applies to the electrical corporation, and (b) the electrical corporation's class average overall rate as of the date rates are set in the electrical corporation's most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under subsection 5 of section 393.1400, reflects a compound annual growth rate of more than two percent for the large power service rate class, the class average overall rate shall increase by an amount so that the increase shall equal a compound annual growth rate of two percent over such period for such large power service class, **with the reduced revenues arising from limiting the large power service class**

[65] *State ex rel. Laundry, Inc. v. Public Service Com'n* 34 S.W.2d 37, 44, 327 Mo. 93, 109 (Mo. 1931)
[66] *State ex rel. Public Counsel v. Public Service Com'n*, 274 S.W.3d 569, 586 (Mo. App. 2009).
[67] *State ex rel. U.S. Water/Lexington v. Missouri Public Service Com'n* 795 S.W.2d 593, 597 (Mo. App. 1990)
[68] *Spire Missouri, Inc. v. Missouri Public Service Com'n* 607 S.W.3d 759, 771 (Mo. App. 2020), *quoting National Ass'n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 103 S.Ct 2727, 77 L.Ed. 2d 195 (1983). That decision was quoting an earlier United State Supreme Court decision, *Colorado Interstate Gas Co. v. Federal Power Commission,* 324 U.S. 581, 589, 65 S.Ct. 829, 833, 89 L.Ed. 1206 (1945).

> **average overall rate increase to two percent to be allocated to all the electrical corporation's other customer classes through the application of a uniform percentage adjustment to the revenue requirement responsibility of all the other customer classes.** (Emphasis added)

This statute does not have any direct impact on this rate case because the cap it imposes has not yet been met. But it does mean that in a future rate case the Residential rate class, as well as Ameren Missouri's other rate classes, could be statutorily required to subsidize the Large Power Service class. It also means that the legislature has recognized that class cost of service decisions can be based on consideration of public policy interests rather than a strict mathematical calculation.

Decision:

For purposes of this case, the Commission finds that Ameren Missouri's class cost of service study offers a reasonable estimation of class cost of service. However, under the particular circumstances of this case, the Commission believes that aside from Ameren Missouri's proposed adjustment to more closely balance the company-owned and customer-owned branches of the Lighting class, no class rate adjustments need to be made and the necessary rate increase should be allocated to all customer classes on an equal percentage basis. In making that determination, the Commission is not relying on the relatively minor differences between the cost studies prepared and submitted by the parties. Rather the Commission is exercising its discretion to look beyond the numbers contained in those cost studies to reach a deeper conclusion that the people who are members of the residential rate class have already faced enough challenges in recent years, including an 8.81 percent electric rate increase that will result from this case, and should not, at this time, have to endure an even larger rate increase to address the imbalance described in Ameren Missouri's class cost of service study.

The Commission continues to believe that cost-based rates are appropriate. It also believes that this decision will result in rates that are not unduly prejudicial to members of any of Ameren Missouri's rate classes. The Commission has made adjustments in the last seven rate cases to bring the various classes closer to their estimated cost of service, and may do so again in future rate cases. But for this case, except for Ameren Missouri's proposed adjustment within the Lighting class, no such adjustments will be made.

B. [A] How should production costs be allocated among customer classes within a class cost of service study?

C. [B] How should the non-fuel, non-labor components of production, operation, and maintenance expense be classified and allocated among customer classes within a class cost of service study?

D. [H] How should distribution costs be allocated or assigned among customer classes within a class cost of service study?

Findings of Fact:

There are no additional findings of fact for these issues.

Conclusions of Law:

Q. The Commission is not authorized to issue advisory opinions.[69]

[69] *State ex rel. Laclede Gas Co. v. Public Service Com'n*, 392 S.W.3d 24, 38 (Mo. App. 2012).

Decision:

The first of these three sub-issues questions the allocation of production costs among the various rate classes for purposes of a class cost of service study. Ameren Missouri's study allocated production costs using a 4 NCP A&E demand method. MIEC and MECG also support use of the 4 NCP A&E method as the "tried and true" generally accepted method for allocating such costs. Staff advocates for the use of a variety of methods to allocate production costs. Most controversially, it uses an energy allocator to allocate the costs associated with renewable generation sources, believing that because there are no fuel costs associated with such generation, the 4 NCP A&E method fails to allocate enough costs to the larger rate classes to the detriment of the smaller rate classes.

The second of these three sub-issues focuses on a minor disagreement between the class cost of service studies prepared by Ameren Missouri and MIEC. Ameren Missouri's study allocates non-fuel, non-labor components of production operation and maintenance expense as a production energy allocation. MIEC's study contends such costs are fixed and should be allocated on an "expenses-follow-plant" basis.

The third of these three sub-issues concerns Staff's desire to use an approach that attempts to assign more distribution costs to customer specific assets. But Staff did not use that approach in its cost study because of a lack of information. MIEC responded that the information Staff sought from Ameren Missouri was not needed to perform a class cost of service study.

The Commission does not need to, and will not, decide these three sub-issues. All three issues are merely disagreements about the details of the class cost of service studies presented by the various parties. Those differences would only be relevant if the

Commission were relying on those differences in making its decision about how to allocate the rate increase to the service rate classes. The Commission has not relied on any such differences in making its determination to allocate that increase to all customer classes on an equal percentage basis.

As a result, any determination the Commission made regarding these three issues would be of no practical effect and would essentially be an advisory opinion that the Commission is not authorized to issue. In addition, the Commission does not believe it would be appropriate to issue a "hypothetical" determination of these questions about how class cost of service studies should be conducted. Inevitably, any such determination would be cited by the parties in future rate cases and would serve only to restrict innovation and new ways of thinking about class cost of service questions. Instead, the Commission wants to encourage the parties to bring forward new ideas for a full consideration in future cases.

E. [F] Should the Commission approve MECG's proposed shift to increase the demand component for Large General Service and Small Primary Service and decrease energy charges?

Findings of Fact:

38. Ameren Missouri incurs three types of costs to serve its Large General Service and Small Primary Service rate classes. Demand costs are fixed costs incurred to size the system so that it meets peak demands imposed by the rate class. As fixed costs they do not change with the amount of energy consumed by the customer. Customer costs are also fixed costs based on the number of customers in the rate class and do not vary with the size of the customer or how much energy that customer

consumes. Energy costs are variable costs incurred based on the amount of energy the customer consumes.[70]

39. Ameren Missouri's class cost of service study shows that approximately seventy-seven percent of the costs incurred to serve Large General Service and Small Primary Service customers are demand related, while approximately twenty-one percent are energy related. However, only fourteen percent of Large General Service revenues and 9.6 percent of Small Primary Service revenues are collected by Ameren Missouri through demand costs.[71]

40. The shift of demand-related costs from demand charges to energy charges tends to disadvantage higher load factor customers to the benefit of lower load factor customers.[72]

41. Load factor – the average rate of use divided by the peak rate of use – is an expression of how uniformly a customer uses energy across time. A customer with a high load factor, meaning they do not have large peaks or valleys in their usage, is less expensive to serve, on a per kWh basis, than a customer with a low load factor, irrespective of the customer's size.[73]

42. MECG proposes that to correct this mismatch of demand and energy charges, Ameren Missouri should increase the summer and winter demand charges for the Large General Service and Small Primary Service by three times the percent class

[70] Chriss Direct, Exhibit 750, Page 33, Lines 7-18.
[71] Chriss Direct, Exhibit 750, Pages 33-34, Lines 21, 1-9 and Table 8.
[72] Chriss Direct, Exhibit 750, Page 36, Lines 12-21.
[73] Brubaker Direct, Exhibit 500, Page15, Lines 1-3.

increases and apply the remaining proposed increase on an equal percentage basis to the summer and winter energy charges.[74]

43. Ameren Missouri does not oppose a modest increase in demand charges relative to energy charges for the Large General Service and Small Primary Service classes, but is concerned about the magnitude of the change proposed by MECG.[75]

44. For more than 1,600 of the smallest customers in the class, MECG's proposed rate restructuring would produce bill increases, arising from the rate design change, of more than five percent, in addition to the general rate increase that has been authorized in this case.[76]

45. Additionally, increasing the demand charge on these rate classes at this time could have an impact on efficient electrification of transportation efforts. During the early years of electric vehicle (EV) adoption, a commercial customer that provides high-speed EV chargers to the public may see significant contributions to their billing demand established as a result of the chargers, but not have a significantly increased total EV-related energy consumption due to the relatively low adoption of EVs so far. The increased demand charge could hurt the economic case for that customer to provide the higher speed EV charging service. Similar issues could impact the customer's own efforts to electrify and charge their own fleet of vehicles.[77]

[74] Chriss Direct, Exhibit 750, Page 46, Lines 8-11.
[75] Wills Rebuttal, Exhibit 18, Page 53, Lines 17-22.
[76] Wills Rebuttal, Exhibit 18, Page 54, Lines 1-5.
[77] Wills Rebuttal, Exhibit 18, Page 54, Lines 8-20.

46. Ameren Missouri's bills to its Large General Service and Small Primary Service customers are based, at least in part on the customer's non-coincident peak (NCP). A monthly NCP is the highest demand a customer experienced during a month. That demand is measured as the highest usage experienced during a fifteen minute interval.[78]

47. A customer's NCP demand is not relevant to Ameren Missouri's generation capacity or resource adequacy unless the NCP demand happens to coincide with the systems peak. It is no more reasonable to recover the costs associated with system peak demands via a customer's NCP demand than it is to recover those costs via a customer's energy consumption.[79]

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

The Commission does not believe a shift between demand charges and energy charges within the Large General Service and Small Primary Service rate classes is appropriate at this time. Such a shift is not necessary to maintain just and reasonable rates and an increase in demand charges could have a negative impact on efficient electrification efforts.

F. [G] Should the Commission approve MECG's recommendation to require the Company to present analyses of alternatives to the hours-use rate design by 2025?

[78] Lange Rebuttal, Exhibit 215, Page 10, Lines 3-10.
[79] Lange Rebuttal, Exhibit 215, Pages 10-11, Lines 18-23, 1-3.

Finding of Fact:

48. Ameren Missouri's rate design for the Large General Service and Small Primary Service rate classes is based on a concept described as "hours use rate design." Ameren Missouri's witness described the rate design as:

> [A] block rate like we have block rates in other classes except for the size of the energy blocks that are applied to pricing are a function of that customer's demand. So if you have a higher demand you have a higher block threshold. And if you have a lower demand, you have a lower block threshold. As you use energy, it proceeds through those prices more quickly if you have a higher demand level.[80]

49. Ameren Missouri's witness agreed that a significant number of customers do not fully understand how that rate design works.[81]

50. Ameren Missouri is open to changing the design of these rates, but wants to wait until its rollout of AMI meters is complete in 2025, so information about the impact of the rate redesign may be collected and the redesigned rates can be applied to all customers.[82]

51. MECG asks the Commission to "require Ameren [Missouri] to redesign LGS [Large General Service] and SP [Small Primary Service] as three-part rates with unbundled demand charges and time varying energy charges and for all LGS and SP customers to be transitioned to those rates by 2025."[83]

Conclusions of Law:

There are no additional conclusions of law for this issue.

[80] Transcript, Pages 301-302, Lines 19-25, 1. *See also*, Chriss Direct, Exhibit 750, Pages 29-30, Lines 2-21, 1-8.
[81] Transcript, Page 302, Lines 4-6
[82] Transcript, Page 303, Lines 2-13. *See also* Wills Rebuttal, Exhibit 18, Page 56, Lines 3-8.
[83] Chriss Direct, Exhibit 750, Page 45, Lines 14-16.

Decision:

The Commission agrees that the Large General Service and Small Primary Service rates should be redesigned to make them more comprehensible for customers. That redesign process can begin now with Ameren Missouri gathering information and insight from customers who are already being served by AMI meters. The Commission will establish, by separate order, a working case to facilitate the collaboration between Ameren Missouri, Staff, Public Counsel, and the affected customers in redesigning these rates.

G. [I] What is the appropriate level of Rider B credits to be applied to the bills of customers providing their own substation equipment?

H. [J] Should Staff's recommended studies and data retention measures be adopted?

1. [3] Performance of a study of the reasonableness of the calculations and assumptions underlying Rider B to be filed as part of the Company's direct filing in its next general rate case.

Findings of Fact:

52. Rider B within Ameren Missouri's rate tariffs establishes credits allowed to customers who are billed at primary rates, but who own their own substation equipment. It is sized to compensate those customers for the revenue requirement associated with customer-specific substations that Ameren Missouri did not have to build to serve those customers.[84]

[84] Staff Report, Class Cost of Service, Exhibit 205, Page 24, Lines 11-13.

53. Base rates for all Ameren Missouri's retail service classifications are established on the premise that Ameren Missouri will provide substation infrastructure as part of basic service, and anyone taking basic service while not receiving a Rider B discount contributes revenues to cover the cost of that substation infrastructure.[85]

54. Customers who own their own substations have invested hundreds of thousands or millions of dollars to displace similar investments Ameren Missouri would otherwise make. They also bear the on-going cost to operate and maintain those substations. Without the Rider B credit, the difference in the cost to serve such customers would be ignored.[86]

55. There are fifty-eight customers in the Small Primary Service rate class and twenty-two customers in the Large Primary Service rate class that currently receive Rider B discounts totaling approximately $3.8 million annually. If the Rider B discount were suspended, these customers would have to pay the same effective rates as customers who have not invested in their own substation equipment.[87]

56. Staff is concerned that Ameren Missouri does not specifically assign the costs of substation equipment that is dedicated to primary customers on the bills of primary customers. In its direct testimony, Staff recommended that the discounts to customers under Rider B be suspended until "Ameren Missouri provides the information necessary to include the cost of primary customer substations in the bills of primary customers (and such costs are included)".[88]

[85] Wills Rebuttal, Ex. 18, Page 22, Lines 16-25.
[86] Wills Rebuttal, Exhibit 18, Page 23, Liens 1-11.
[87] Wills Rebuttal, Exhibit 18, Pages 23-24, Lines 12-22, 1-2.
[88] Staff Report, Class Cost of Service, Exhibit 205, Page 54, Lines 7-11.

57. Specifically, Staff believes it needs to know "the number of LPS and SPS customers who own their own substation or substation components, and the value of LPS customer-specific infrastructure in the distribution accounts, and the value of SPS customer-specific infrastructure in the distribution accounts. From those values, a simple average-per customer by class calculation would be the starting point."[89]

58. By the time of the hearing, Staff had modified its position to call for a suspension of the Rider B credits only if the Commission were to order something other than an across the board equal rate increase to all rate classes.[90] In its brief, Staff further modified its position to recommend only that the amount of the credits not be adjusted from current amounts if shifts in revenue responsibility are made between rate classes.[91]

59. In this order the Commission is not shifting revenue responsibility between rate classes so Staff's request to suspend or adjust the credits is no longer applicable. However, Staff continues to believe that a study is needed to better address this issue in Ameren Missouri's next rate case.[92]

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

The Commission will not suspend the Rider B credits, but it believes the question of the proper calculation of those credits should be further addressed in Ameren Missouri's next rate case. Therefore, the Commission will direct Ameren Missouri to study

[89] Lange Surrebuttal, Exhibit 231, Page 15, Lines 11-15.
[90] Transcript, Page 377, Lines 7-18.
[91] Staff's Initial Post-Hearing Brief, Pages 27-28. *See also*, Transcript, Page 382, Lines 7-18.
[92] Transcript, Page 378, Lines 13-17.

the reasonableness of the calculations and assumption underlying Rider B and to file the results of that study as part of its direct filing in its next general rate case.

By statute, orders of the Commission become effective in thirty days, unless the Commission establishes a different effective date.[93] To prevent unnecessary delay in the filing of compliance tariffs, the Commission will make this order effective on February 12, 2022, which the Commission determines is a reasonable shortening of the statutory timeframe.

THE COMMISSION ORDERS THAT:

1. The tariff sheets submitted on March 31, 2021, by Ameren Missouri, assigned Tracking No. YE-2021-0175 and an additional tariff sheet filed on October 15, 2021, and assigned Tracking No. YE-2022-0076, are rejected.

2. Ameren Missouri is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order and the approved stipulations and agreements.

3. Ameren Missouri shall comply with all directives, conditions and other requirements as more fully described in the body of this order.

4. Staff's Motion to Strike Settlement Statement from MECG Brief is denied.

5. MIEC's Motion to File Post-Hearing Brief Out of Time is granted.

6. This report and order shall become effective on February 12, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

[93] Section 386.490.2, RSMo.

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

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Constellation NewEnergy - Gas Division, LLC, Complainant, v. Spire Missouri, Inc. d/b/a Spire Respondent.	)	**File No. GC-2021-0315**
Symmetry Energy Solutions, LLC, Complainant, v. Spire Missouri, Inc. d/b/a Spire Respondent.	)	**File No. GC-2021-0316**
Clearwater Enterprises, L.L.C., Complainant, v. Spire Missouri, Inc. d/b/a Spire and its Operating Unit Spire Missouri West Respondent.	)	**File No. GC-2021-0353**

ORDER DENYING SPIRE MISSOURI'S MOTION FOR PROTECTIVE ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§12. Depositions

Missouri does not have any special discovery rule relating to the deposition of a high-level executive of a corporation. The Missouri Supreme Court specifically declined to

adopt such an “apex” rule, instead holding that a deposition of “top-level decision-makers” should proceed in accordance with the general discovery rules.

§12. Depositions

Top-level depositions may be annoying, burdensome, expensive, and oppressive. The organization or the top-level employee may seek a protective order. A protective order should be issued if annoyance, oppression and undue burden and expense outweigh the need for discovery.

§12. Depositions

For top level employee depositions the court should consider whether other methods of discovery have been pursued; the proponent’s need for discovery by top-level deposition; and the burden, expense, annoyance, and oppression to the organization and the proposed deponent. The party or person opposing discovery has the burden of showing good cause to limit discovery.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of February, 2022.

Constellation NewEnergy - Gas Division, LLC, Complainant, v. Spire Missouri, Inc. d/b/a Spire Respondent.	)	**File No. GC-2021-0315**
Symmetry Energy Solutions, LLC, Complainant, v. Spire Missouri, Inc. d/b/a Spire Respondent.	)	**File No. GC-2021-0316**
Clearwater Enterprises, L.L.C., Complainant, v. Spire Missouri, Inc. d/b/a Spire and its Operating Unit Spire Missouri West Respondent.	)	**File No. GC-2021-0353**

ORDER DENYING SPIRE MISSOURI'S MOTION FOR PROTECTIVE ORDER

Issue Date: February 17, 2022 Effective Date: February 17, 2022

Background

The Respondent, Spire Missouri, Inc. (Spire), filed a motion for protective order on February 2, 2022, asking the Commission to prohibit the Complainants – Constellation NewEnergy – Gas Division, LLC (CNEG), Symmetry Energy Solutions, LLC (Symmetry), and Clearwater Enterprises, L.L.C. (Clearwater) – from deposing Spire Missouri President, Scott Carter, and Spire's Manager of Records Retention, Bob McKee. The Commission ordered that any responses to that motion be filed by February 8, 2022. CNEG and Symmetry filed timely responses to Spire's motion.

These three complaints arise from the extreme cold weather event that struck the central United States in February 2021. That event is sometimes referred to as Winter Storm Uri. As the effects of the storm developed, Spire issued an Operational Flow Order (OFO) on its Spire West operating system. That OFO required shippers of gas through Spire's system to balance their shipments of gas daily, meaning they had to deliver sufficient supplies of gas into Spire's system each day to meet the gas demand of their customers on the system. Under normal conditions, such shipments are balanced monthly. During the storm, the market for natural gas supplies became extremely unstable and spot prices for natural gas reached stratospheric heights.

The three complainants – CNEG, Symmetry, and Clearwater – are natural gas marketing companies that during Winter Storm Uri failed to deliver enough gas into Spire's system to fully meet the needs of their customers. Spire billed the gas marketers for natural gas used by the marketers' customers during the storm. The bills included the cost of gas Spire said it procured to replace the gas that was not delivered to the system by the marketers, as well as substantial OFO penalties established under Spire's tariffs

for the failure to balance natural gas supplies and deliveries during the OFO. Spire's February 2021 bill to the Complainants was approximately $35 million to CNEG, $150 million to Symmetry, and $7 million to Clearwater

CNEG, Symmetry, and Clearwater filed separate complaints against Spire, alleging that the OFO issued by Spire in February 2021 did not comply with the requirements of Spire tariff in that the OFO was put in place without sufficient justification, and kept in place beyond the time Spire knew, or should have known, it was no longer necessary. The complainants further allege that Spire has overstated the cost of obtaining natural gas to make-up for the shortage of gas supplied by the marketers.

The three complaints were filed separately and have not been consolidated. However, they have been consolidated for purposes of a joint hearing, which is currently scheduled to take place on April 18-22, 2022. In addition, counsel for all Complainants have cooperated in their attempts to obtain discovery from Spire.

Among other discovery efforts, the Complainants have sought to depose Spire Missouri President, Scott Carter, and Spire's Manager of Records Retention, Bob McKee. Spire's Motion for Protective Order seeks to block both depositions.

Deposition of Spire President Scott Carter

Spire's Motion for Protective Order contends the proposed deposition of Scott Carter should be prohibited because (1) Complainants have failed to first depose lower-level employees who would have better information than Mr. Carter; (2) Mr. Carter has no unique knowledge about the relevant facts or events underlying the complaints; and (3) given the importance of Mr. Carter's role as president and his lack of personal

knowledge, requiring him to sit for a day of deposition would inflict substantial annoyance and burden on him and Spire.

Discovery at the Commission is governed by Commission Rule 20 CSR 4240-2.090(1), which states that discovery "may be obtained by the same means and under the same conditions as in civil actions in the circuit court." The applicable Missouri civil procedure rule regarding discovery is Mo. Sup. Ct. Rule 56.01. That rule provides in general that parties may obtain discovery regarding any relevant matter that is not privileged. In deciding whether discovery is to be had, the tribunal is to consider whether the discovery is:

> proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

The party seeking discovery has the burden of establishing relevance.[1] That rule also requires that discovery must be limited if the tribunal determines that:

> (A) The discovery sought is cumulative, duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
> (B) The party seeking discovery as had ample opportunity to obtain the information by discovery in the action; or
> (C) The proposed discovery is outside the scope permitted by this Rule 56.01(b)(1).

Missouri does not have any special discovery rule relating to the deposition of a high-level executive of a corporation. In a 2002 case, *Ford Motor Company v. Messina*,[2]

[1] Missouri Rules of Civil Procedure 56.01(b)(1).
[2] 71 S.W.3d 602 (Mo banc 2002).

the Missouri Supreme Court specifically declined to adopt such an "apex" rule, instead holding that a deposition of "top-level decision-makers" should proceed in accordance with the general discovery rules.[3] Nevertheless, the court recognized that such top-level depositions may be annoying, burdensome, expensive, and oppressive,[4] and that the organization or the top-level employee may seek a protective order.[5] The Court stated:

> [a] protective order should be issued if annoyance, oppression and undue burden and expense outweigh the need for discovery. For top level employee depositions the court should consider whether other methods of discovery have been pursued; the proponent's need for discovery by top-level deposition; and the burden, expense, annoyance, and oppression to the organization and the proposed deponent. [Internal citations omitted].[6]

The party or person opposing discovery has the burden of showing good cause to limit discovery.

In *Ford Motor Company v. Messina*, the Court found that Ford had established good cause to prevent the deposition of two top-level Ford employees. That case concerned an alleged product defect regarding the tires of a 1987 Bronco II and Ford's failure to issue a recall of that product. The plaintiff sought to depose the top-level employees about a similar problem with the tires on the Ford Explorer and a recall that was implemented in 2001. In finding that the depositions should not proceed, the Court found (1) that the plaintiff had not first attempted less intrusive means of discovery, as the proposed depositions of the top-level employees was the first attempt by the plaintiff to obtain discovery about this matter; (2) that the plaintiff's need for the discovery was slight in that the recall of the Ford Explorer was not directly related to the failure to recall the

[3] *Ford v. Messina*, at 607.
[4] *Ford v. Messina,* at 606.
[5] *Ford v. Messina*, at 607.
[6] *Ford v. Messina*, at 607.

Ford Bronco II; and (3) that Ford is a huge organization with more than 300,000 employees and is involved in extensive litigation. Consequently, unnecessarily deposing Ford's top level executives would be annoying, unduly burdensome and expensive, and oppressive.[7]

Ford Motor Company v. Messina is not the Missouri Supreme Court's last word on the deposition of top-level employees. The Court revisited the issue in a 2015 case involving the Kansas City Chiefs. In *Cox v. Kansas City Chiefs Football Club, Inc.*,[8] an employee of the football club alleged that Clark Hunt, the owner of the Chiefs, had instructed the club's general manager to "go in a more youthful direction" and he did so by firing many older employees. Cox was one of those fired and he responded with a suit alleging age discrimination. Cox sought to depose Clark Hunt and the trial court granted a protective order that did not allow for Hunt to be deposed.

In finding that the trial court abused its discretion in not permitting Hunt to be deposed, the Court found that Cox's theory of the case was that the club's policy to discriminate against older employees originated at the top. When the Chiefs denied that any such policy existed, there were questions that only Hunt could answer and the court should have allowed him to be deposed.[9]

Consideration of the facts in this case as they apply to the standard described in Rule 56.01 and *Ford Motor Company v. Messina* is instructive. As to the first standard, the deposition of Mr. Carter is not the Complainants' first attempt to discover information about the events surrounding the OFO and Winter Storm Uri. In December 2021, the

[7] *Ford v. Messina*, at 608.
[8] 473 S.W.3d 107 (Mo. banc 2015)
[9] *Cox*, at 127.

Complainants deposed Spire's Vice-President for Gas Supply, George Godat, as a corporate representative designated by Spire pursuant to Mo. Sup. Ct. R. 57.03(b)(4). Godat testified that he reports directly to Mr. Carter and that he kept Mr. Carter informed about the decision to issue the OFO and to sell storage gas while the OFO was in effect. The Complainants want to be able to ask Mr. Carter why he permitted the OFO to be issued, why he did not end the OFO sooner, and any other discussions he may have had, or decisions he may have made about the sale of storage gas.

As to the second standard, the Complainants have described a significant need for the information that Mr. Carter may be able to provide. Spire is demanding that the three Complainants pay a total of nearly $200 million in gas costs and OFO penalties. Spire's actions in imposing the OFO and the facts purporting to justify the issuance of an OFO are central to the Complainants' theory about why they should not have to pay that large sum of money. This is not a tangential theory about the recall of an unrelated product as described in *Ford Motor Company v. Messina*. Rather, it is the heart of the Complainant's case, akin to the central theory of Cox's discrimination claim against the Chiefs.

Finally, applying the third standard, while Mr. Carter is no doubt a busy executive and his time should not be burdened unnecessarily, this matter is as significant to Spire as it is to the Complainants. This is not just one of dozens of product liability actions going on around the country as described in *Ford Motor Company v. Messina.* Instead, its resolution will have a significant impact on the company that Mr. Carter leads. Under the circumstances, requiring Mr. Carter to sit for a deposition will not be annoying, unduly burdensome and expensive, or oppressive.

Applying the standards described in *Ford Motor Company v. Messina*, in light of the findings in *Cox*, the Commission finds that Spire's request for a protective order precluding the deposition of Mr. Carter should be denied.

Deposition of Spire's Manager of Records Retention, Bob McKee

Spire contends the proposed deposition of Spire's Manager of Records Retention, Bob McKee, should be prohibited because it has already produced its written records retention policy and Mr. McKee has no personal knowledge regarding the factual allegations in the complaints. Spire asserts that Mr. McKee has no knowledge of any lost or destroyed documents. Further, Spire argues that the filed complaints do not allege that Spire violated its tariff by failing to retain documents and there is no evidence in the record to suggest a spoliation issue.

The Complainants counter that the deposition of Spire's manager of records retention is necessary because of the difficulties it has faced in obtaining e-mails and chat messages from Spire regarding events during and leading up to issuance of the OFO. They want to be able to ask Mr. McKee about application of the records retention policy and whether any documents that should have been retained under that policy have either been lost or destroyed.

The Commission finds that the information the Complainants seek to obtain through the deposition of Mr. McKee is within the proper scope of discovery as established in Mo. Sup. Ct. R. 56.01(b). The Complainants are not required to rely on the representations of Spire's counsel that all relevant documents have been disclosed in discovery and are entitled to question Mr. McKee about those issues. The Commission

finds that Spire's request for a protective order precluding the deposition of Mr. McKee should be denied.

THE COMMISSION ORDERS THAT:

1. Spire's Motion for Protective Order is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and Kolkmeyer CC., concur.
Rupp, C., absent.

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Constellation NewEnergy - Gas Division, LLC, Complainant, v. Spire Missouri, Inc. d/b/a Spire Respondent.	)	**File No. GC-2021-0315**
Symmetry Energy Solutions, LLC, Complainant, v. Spire Missouri, Inc. d/b/a Spire Respondent.	)	**File No. GC-2021-0316**
Clearwater Enterprises, L.L.C., Complainant, v. Spire Missouri, Inc. d/b/a Spire and its Operating Unit Spire Missouri West Respondent.	)	**File No. GC-2021-0353**

ORDER REGARDING CONSTELLATION'S MOTION TO COMPEL DISCOVERY FROM SPIRE

EVIDENCE, PRACTICE AND PROCEDURE

§13. Documentary evidence

In deciding whether discovery is to be had, the tribunal is to consider whether the discovery is: proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the

action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of February, 2022.

Constellation NewEnergy - Gas Division, LLC, Complainant, v. Spire Missouri, Inc. d/b/a Spire Respondent.	)	**File No. GC-2021-0315**
Symmetry Energy Solutions, LLC, Complainant, v. Spire Missouri, Inc. d/b/a Spire Respondent.	)	**File No. GC-2021-0316**
Clearwater Enterprises, L.L.C., Complainant, v. Spire Missouri, Inc. d/b/a Spire and its Operating Unit Spire Missouri West Respondent.	)	**File No. GC-2021-0353**

ORDER REGARDING CONSTELLATION'S MOTION TO COMPEL DISCOVERY FROM SPIRE

Issue Date: February 17, 2022 Effective Date: February 17, 2022

On February 8, 2022, Constellation NewEnergy-Gas Division (CNEG) filed a motion to compel Spire to respond to certain data requests. Spire responded to CNEG's Motion to Compel on February 11, 2022. CNEG replied to Spire on February 15, 2022.

CNEG's complaint is one of three complaints arising from the extreme cold weather event that struck the central United States in February, 2021. That event is sometimes referred to as Winter Storm Uri. As the effects of the storm developed, Spire issued an Operational Flow Order (OFO) on its Spire West operating system. That OFO required shippers of gas through Spire's system to balance their shipments of gas daily, meaning they had to deliver sufficient supplies of gas into Spire's system each day to meet the gas demand of their customers on the system. Under normal conditions, such shipments are balanced monthly. During the storm, the market for natural gas supplies became extremely unstable and spot prices for natural gas reached stratospheric heights.

The three complainants - CNEG, Symmetry Energy Solutions, LLC, (Symmetry), and Clearwater Enterprises, L.L.C. (Clearwater) - are natural gas marketing companies that during Winter Storm Uri failed to deliver enough gas into Spire's system to fully meet the needs of their customers. Spire billed the gas marketers for natural gas used by the marketers' customers during the storm. The bills included the cost of gas Spire said it procured to replace the gas that was not delivered to the system by the marketers, as well as substantial OFO penalties established under Spire's tariffs for the failure to balance natural gas supplies and deliveries during the OFO. Spire's February 2021 bill to the Complainants was approximately $35 million to CNEG, $150 million to Symmetry, and $7 million to Clearwater.

CNEG, Symmetry, and Clearwater filed separate complaints against Spire, alleging that the OFO issued by Spire in February 2021 did not comply with the requirements of Spire's tariff in that the OFO was put in place without sufficient justification, and kept in place beyond the time Spire knew, or should have known, it was no longer necessary. The complainants further allege that Spire has overstated the cost of obtaining natural gas to make-up for the shortage of gas supplied by the marketers.

The three complaints were filed separately and have not been consolidated. However, they have been consolidated for purposes of a joint hearing, which is currently scheduled to take place on April 18-22, 2022. In addition, counsel for all complainants have cooperated in their attempts to obtain discovery from Spire.

Discovery at the Commission is governed by Commission Rule 20 CSR 4240-2.090(1), which states that discovery "may be obtained by the same means and under the same conditions as in civil actions in the circuit court." The applicable Missouri civil procedure rule regarding discovery is Missouri Rules of Civil Procedure Rule 56.01. That rule provides in general that parties may obtain discovery regarding any relevant matter that is not privileged. In deciding whether discovery is to be had, the tribunal is to consider whether the discovery is:

> proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

The party seeking discovery has the burden of establishing relevance.[1] That rule also requires that discovery must be limited if the tribunal determines that:

> (A) The discovery sought is cumulative, duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
> (B) The party seeking discovery as had ample opportunity to obtain the information by discovery in the action; or
> (C) The proposed discovery is outside the scope permitted by this Rule 56.01(b)(1).

The Commission's rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court.[2] In addition, parties may use data requests as a means of discovery.[3] Data requests are enforceable by means of a motion to compel pursuant to Missouri Rules of Civil Procedure Section 61.01(g).

CNEG expresses concern that Spire has failed to produce documents that are responsive to its data request and that CNEG believes exist, based on conflicting explanations offered by Spire. Specifically, CNEG seeks to compel production of responsive documents along four categories: (1) chats using the Intercontinental Exchange, Inc. trading platform ("ICE Chats") during February 2021; (2) Microsoft Team chats during February 2021; (3) emails or other communications with Southern Staff personnel during February 2021; and internal Spire emails during February 2021 related to Spire's Operational Flow Order, Southern Star's operating conditions, Spire's natural gas trading and marketing affiliate (Spire Marketing), and Spire's sales of natural gas from storage before and during Winter Storm Uri. Spire's response asserts that it has already

[1] Missouri Rules of Civil Procedure 56.01(b)(1).
[2] Commission Rule 20 CSR 4240-2.090(1).
[3] Commission Rule 20 CSR 4240-2.090(2).

responded to CNEG's document request through prior discovery and that there is no need to issue an order directing Spire to further respond.

The Commission will grant CNEG's motion to compel.

THE COMMISSION ORDERS THAT:

1. CNEG's Motion to Compel Discovery from Spire is granted.

2. No later than March 3, 2022, Spire shall produce all documents and data responsive to the requests outlined in CNEG's Motion to Compel Discovery. For any such documents and data that once existed, but has not been produced or allegedly cannot now be produced, Spire shall explain the circumstances of such data loss that resulted in Spire's inability to produce such documents.

3. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and Kolkmeyer CC., concur.
Rupp, C., absent.

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0316**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER GRANTING SYMMETRY'S MOTION TO COMPEL PRODUCTION OF RESPONSIVE DOCUMENTS

EVIDENCE, PRACTICE AND PROCEDURE

§13. Documentary evidence

The Commission's rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court. In addition, parties may use data requests as a means of discovery. Data requests are enforceable by means of a motion to compel pursuant to Missouri Rules of Civil Procedure Section 61.01(g).

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of February, 2022.

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0316**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER GRANTING SYMMETRY'S MOTION TO COMPEL PRODUCTION OF RESPONSIVE DOCUMENTS

Issue Date: February 17, 2022 Effective Date: February 17, 2022

On February 8, 2022, Symmetry Energy Solutions, LLC (Symmetry) filed a motion to compel Spire to respond to certain data requests. Spire responded to Symmetry's Motion to Compel on February 11, 2022. Symmetry replied to Spire's response on February 15, 2022.

Symmetry's complaint is one of three complaints arising from the extreme cold weather event that struck the central United States in February, 2021.[1] That event is sometimes referred to as Winter Storm Uri. As the effects of the storm developed, Spire issued an Operational Flow Order (OFO) on its Spire West operating system. That OFO required shippers of gas through Spire's system to balance their shipments of gas daily, meaning they had to deliver sufficient supplies of gas into Spire's system each day to

[1] The other complaints are by Constellation NewEnergy – Gas Division, LLC (CNEG) (GC-2021-0315) and Clearwater Enterprises, LLC (GC-2021-0353).

meet the gas demand of their customers on the system. Under normal conditions, such shipments are balanced monthly. During the storm, the market for natural gas supplies became extremely unstable and spot prices for natural gas reached stratospheric heights.

The three complainants, CNEG, Symmetry, and Clearwater, are natural gas marketing companies that during Winter Storm Uri failed to deliver enough gas into Spire's system to fully meet the needs of their customers. Spire billed the gas marketers for natural gas used by the marketers' customers during the storm. The bills included the cost of gas Spire said it procured to replace the gas that was not delivered to the system by the marketers, as well as substantial OFO penalties established under Spire's tariffs for the failure to balance natural gas supplies and deliveries during the OFO. Spire's February 2021 bill to the Complainants was approximately $35 million to CNEG, $150 million to Symmetry, and $7 million to Clearwater.

CNEG, Symmetry, and Clearwater filed separate complaints against Spire, alleging that the OFO issued by Spire in February 2021 did not comply with the requirements of Spire's tariff in that the OFO was put in place without sufficient justification, and kept in place beyond the time Spire knew, or should have known, it was no longer necessary. The complainants further allege that Spire has overstated the cost of obtaining natural gas to make-up for the shortage of gas supplied by the marketers.

The three complaints were filed separately and have not been consolidated. However, they have been consolidated for purposes of a joint hearing, which is currently scheduled to take place on April 18-22, 2022. In addition, counsel for all Complainants have cooperated in their attempts to obtain discovery from Spire.

Discovery at the Commission is governed by Commission Rule 20 CSR 4240-2.090(1), which states that discovery "may be obtained by the same means and under the same conditions as in civil actions in the circuit court." The applicable Missouri civil procedure rule regarding discovery is Mo. Sup. Ct. Rule 56.01. That rule provides in general that parties may obtain discovery regarding any relevant matter that is not privileged. In deciding whether discovery is to be had, the tribunal is to consider whether the discovery is:

> proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

The party seeking discovery has the burden of establishing relevance.[2] That rule also requires that discovery must be limited if the tribunal determines that:

> (A) The discovery sought is cumulative, duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
> (B) The party seeking discovery as had ample opportunity to obtain the information by discovery in the action; or
> (C) The proposed discovery is outside the scope permitted by this Rule 56.01(b)(1).

The Commission's rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court.[3] In addition, parties may use data requests as a means of

[2] Missouri Rules of Civil Procedure 56.01(b)(1).
[3] Commission Rule 20 CSR 4240-2.090(1).

discovery.[4] Data requests are enforceable by means of a motion to compel pursuant to Missouri Rules of Civil Procedure Section 61.01(g).

Symmetry seeks a broad order from the Commission directing Spire to produce all documents responsive to Symmetry's various data requests, going back to the first data request served on March 26, 2021. Symmetry contends Spire made implausibly small and facially incomplete document productions in response to Symmetry's data request and then made several statements that it had produced all responsive documents. Subsequently, Spire has produced additional documents during the course of ongoing depositions.

Symmetry explains that during a December 2021 deposition of Spire's corporate representative George Godat, Mr. Godat testified to the existence of many categories of documents that are clearly responsive to Symmetry's data requests, but which Spire has not disclosed, including internal email and chat communications, correspondence with upstream pipelines, gas demand forecasts, base contracts and transactional confirmations, and daily summaries of Spire's gas supply portfolio. Symmetry asks the Commission to order Spire to cooperate in discovery, provide the documents and information requested by Symmetry, and – to the extent that responsive documents are not being produced because they have been destroyed – identify such materials.

Symmetry served Spire with its first set of data requests on March 26, 2021. Spire served objections on April 5, 2021; served responses on April 28 and September 9, 2021; and produced 45 documents prior to and on September 9, 2021. Symmetry served Spire with its second and third sets of data requests on January 7, 2022 and January 11, 2022,

[4] Commission Rule 20 CSR 4240-2.090(2).

respectively. Spire served objections to these data requests on January 14, 2022 and January 19, 2022; served written responses on January 21, 2022 and January 24, 2022; and produced six documents on January 24, 2022, and 308 documents on February 2, 2022. The Commission finds that Spire did not produce all non-privileged documents within its possession, custody, or control responsive to the data requests, and will grant the motion to compel.

THE COMMISSION ORDERS THAT:

1. Symmetry's Motion to Compel Production of Responsive Documents by Spire Missouri, Inc. is granted.

2. By **Thursday, February 17, 2022, at 5:00 PM, Central time**, Spire shall produce the following categories of documents in response to Symmetry's Data Requests Nos. 3, 7, 31, 33, 47, 58, 73 and 74:

a. Documentation regarding Spire's available gas supply for each day in February 2021, including baseload gas, callable gas, storage gas, and spot purchases;

b. Trade confirmations and invoices for all of Spire's gas purchases and sales in February 2021;

c. A daily record of all sources of supply to the Spire Missouri West system in February 2021, including:

i. whether the gas was baseload, callable, storage, or spot purchases;

ii. the price basis for the gas (whether FOM, GDD, or otherwise);

iii. the actual price Spire paid for the gas;

iv. the volume of gas, both as contracted and as actually delivered;

v. the date the gas was contracted to be purchased;

vi. the date, or date range, for delivery;

vii. whether the supply was firm or interruptible—and if interruptible, any exceptions to that; and

viii. any applicable reservation or demand charges assessed to Spire's sales customers for the use of certain volumes of gas including, but not limited to, callable options and storage.

d. All forecasts regarding supply, customer demand, storage, and weather in February 2021 (including any regression analyses referred to by Mr. Godat in his deposition);

e. Daily supply cuts faced by Spire (regardless of whether notice was verbal or written) during February 2021 and all force majeure notices provided to Spire by its suppliers during February 2021; and

f. Daily throughput on the Missouri West system, broken down between sales customers and transportation customers.

3. By **Friday, February 18, 2022, at 5:00 PM, Central time,** Spire shall:

a. Produce the following categories of documents in response to Symmetry's Data Requests Nos. 3, 7, 31, 33, 47, 58, 64, 73 and 74:

i. Email and chat communications, from February 2021 through the present, relating to the following:

1. The need for, issuance, duration and termination of the

OFO, including discussions of supply and demand, correspondence with upstream pipelines and suppliers, and correspondence regarding system integrity.

2. Spire's gas transactions in February 2021, including Spire's decisions to (or to not) purchase gas, utilize storage inventory, and sell gas and capacity.

3. The decision not to curtail any customers during February 2021.

ii. Agreements and correspondence during or relating to February 2021 with Southern Star.

iii. A complete set of all gas supply/demand and weather forecasts and projections for the days February 5-22, 2021 and any correspondence relating thereto.

iv. Documentation, including trade confirmations and invoices, for any gas purchases, sales, or other transactions in February 2021 not covered by the categories listed above, including Spire's daily portfolio summary or position report.

b. Identify by category and, if known, by document, any responsive documents or categories of documents that have been destroyed or not preserved, including without limitation ICE chats, Microsoft Teams chats and emails, and the reasons for any such destruction or non-preservation.

4. By **Thursday, March 3, 2022**, Spire shall complete the production of any and all other documents responsive to Symmetry's data requests.

5. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and Kolkmeyer CC., concur.
Rupp, C., absent.

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0316**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER REGARDING SYMMETRY'S MOTION TO COMPEL FURTHER DEPOSITION TESTIMONY FROM SPIRE'S CORPORATE REPRESENTATIVE

EVIDENCE, PRACTICE AND PROCEDURE

§12. Depositions

A party may subpoena as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. The person so designated shall testify as to matters known or reasonably available to the organization.

§12. Depositions

The deposition of a corporate representative is not the deposition of that individual for his or her personal recollections or knowledge but is instead the deposition of the corporate defendant. If the representative can state simply that he has no personal knowledge of the matter, then a party engaged in litigation against a corporation would be placed at a significant disadvantage, subject to deposition by the corporate defendant but left with little access to what knowledge could be imputed to the corporation.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of February, 2022.

Symmetry Energy Solutions, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2021-0316**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER REGARDING SYMMETRY'S MOTION TO COMPEL FURTHER DEPOSITION TESTIMONY FROM SPIRE'S CORPORATE REPRESENTATIVE

Issue Date: February 17, 2022 Effective Date: February 17, 2022

On February 4, 2022, Symmetry Energy Solutions, LLC (Symmetry) filed a motion to compel Spire Missouri, Inc. d/b/a Spire (Spire) to produce its corporate representative, George Godat, to be further deposed. Spire responded to Symmetry's motion to compel further deposition testimony on February 11, 2022.

Symmetry's complaint is one of three complaints arising from the extreme cold weather event that struck the central United States in February 2021.[1] That event is sometimes referred to as Winter Storm Uri. As the effects of the storm developed, Spire issued an Operational Flow Order (OFO) on its Spire West operating system. That OFO required shippers of gas through Spire's system to balance their shipments of gas daily,

[1] The other complaints are by Constellation NewEnergy – Gas Division, LLC (GC-2021-0315) and Clearwater Enterprises, LLC. (GC-2021-0353).

meaning they had to deliver sufficient supplies of gas into Spire's system each day to meet the gas demand of their customers on the system. Under normal conditions, such shipments are balanced monthly. During the storm, the market for natural gas supplies became extremely unstable and spot prices for natural gas reached stratospheric heights.

The three complainants - Constellation NewEnergy - Gas Division (CNEG), Clearwater Enterprises, LLC (Clearwater), and Symmetry - are natural gas marketing companies that during Winter Storm Uri failed to deliver enough gas into Spire's system to fully meet the needs of their customers. Spire billed the gas marketers for natural gas used by the marketers' customers during the storm. The bills included the cost of gas Spire said it procured to replace the gas that was not delivered to the system by the marketers, as well as substantial OFO penalties established under Spire's tariffs for the failure to balance natural gas supplies and deliveries during the OFO. Spire's February 2021 bill to the complainants was approximately $35 million to CNEG, $150 million to Symmetry, and $7 million to Clearwater

CNEG, Symmetry, and Clearwater filed separate complaints against Spire, alleging that the OFO issued by Spire in February 2021 did not comply with the requirements of Spire tariff in that the OFO was put in place without sufficient justification, and kept in place beyond the time Spire knew, or should have known, it was no longer necessary. The complainants further allege that Spire has overstated the cost of obtaining natural gas to make-up for the shortage of gas supplied by the marketers.

The three complaints were filed separately and have not been consolidated. However, they have been consolidated for purposes of a joint hearing, which is currently

scheduled to take place on April 18-22, 2022. In addition, counsel for all complainants have cooperated in their attempts to obtain discovery from Spire.

Discovery at the Commission is governed by Commission Rule 20 CSR 4240-2.090(1), which states that discovery "may be obtained by the same means and under the same conditions as in civil actions in the circuit court." The applicable Missouri civil procedure rule regarding discovery is Missouri Rules of Civil Procedure Rule 56.01. That rule provides in general that parties may obtain discovery regarding any relevant matter that is not privileged. In deciding whether discovery is to be had, the tribunal is to consider whether the discovery is:

> proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.

The party seeking discovery has the burden of establishing relevance.[2]

Symmetry, and the other complainants, previously deposed Spire's Vice-President of Gas Supply, George Godat, on December 13, 2021. Godat was deposed as Spire's corporate representative pursuant to Missouri Rules of Civil Procedure 57.03(b)(4). That rule states:

> A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify.… The person so designated shall testify as to matters known or reasonably available to the organization.…

[2] Missouri Rules of Civil Procedure 56.01(b)(1).

In analyzing this rule, the Missouri Supreme Court said in *State ex rel. Reif v. Jamison*,[3] that the purpose of the rule is to "permit a party to depose an opposing corporation's representative under circumstances in which the statements made by the witness on identified topics will be admissible against and binding on the corporate party."[4]

Reif v. Jamison was a personal injury case in which the plaintiff subpoenaed a corporate representative for a deposition under Missouri Rules of Civil Procedure 56.03(b)(4). At his deposition the corporate representative testified that he had no personal knowledge about several topics identified by the plaintiffs. He also testified that he had not consulted with the defendant corporation to establish the defendant's position with respect to those issues. The plaintiffs thereupon sought an order from the trial court allowing them to depose a different corporate representative. The trial court denied that motion, but the Supreme Court granted the plaintiff's writ of mandamus, finding that the trial court had abused its discretion by overruling the motion to compel production of a substitute corporate representative prepared to testify regarding the defendant's organizational knowledge of the identified deposition topics.[5] In explaining its decision, the Court said that the deposition of a corporate representative under the rule is "not the deposition of that individual for his or her personal recollections or knowledge but is instead 'the deposition of the corporate defendant.'" [Internal citation omitted].[6] The Court further explained "[i]f the representative can state simply that he has no personal

[3] 271 S.W.3d 549 (Mo. banc 2008).
[4] *Reif v. Jamison*, at 551.
[5] *Reif v. Jamison*, at 551.
[6] *Reif v. Jamison*, at 551.

knowledge of the matter, then a party engaged in litigation against a corporation would be placed at a significant disadvantage, subject to deposition by the corporate defendant but left with little access to what knowledge could be imputed to the corporation."[7]

Symmetry subpoenaed a corporate witness to be deposed about ten topics related to the events occasioned by Winter Storm Uri and the OFO issued by Spire. Mr. Godat was designated by Spire to be that witness. Symmetry asks the Commission to order further depositions regarding the following topics:

1. Spire's collection and production of documents in this matter, including the basis for stating that "Spire has no additional responsive documents to produce at this time" in Spire's September 17, 2021 letter.

Symmetry complains that Mr. Godat was unable to answer basic questions about what steps Spire took to preserve and produce relevant documents. Spire responds that it objected to Symmetry's questions on this topic at the deposition and argues Symmetry's concerns about production of documents should be handled between counsel and within the pending motion to compel and is not a proper topic for the deposition of a corporate witness.

The Commission finds that Spire is correct on this particular point. This is a matter that is tied to the decisions of Spire's legal counsel as to which documents to produce during the course of discovery and is better addressed in the motions to compel production of documents that are currently before the Commission.

[7] *Reif v. Jamison*, at 551.

2. The full factual bases, including details and the supporting documentation, for each of the following statements in Spire's September 17, 2021 letter:

2b. Spire reacted by initiating an OFO to all marketers for the projected start of the storm and short market.

Symmetry complains that Mr. Godat was unable to answer several questions about this topic and instead attempted to defer to other Spire employees who would have more personal knowledge. Spire responded that this is a rather vague topic that Mr. Godat made an honest attempt to answer. That he was not able to provide detailed responses to all questions on the topic does not require that Mr. Godat be re-deposed.

The Commission agrees with Spire. The answers offered by Mr. Godat that are cited by Symmetry are reasonable responses to questions about the details of events. Even the best prepared corporate witness will not be able to precisely describe every action taken by every employee of the corporation during a multi-day period.

2f. As a result, Symmetry customers largely did not conserve natural gas during this period.

Symmetry complains that Mr. Godat was unable to explain whether Spire has the means to determine whether individual customers are conserving natural gas. Spire responded by pointing out that later in his deposition, Mr. Godat testified that Spire was able to identify which of the marketer's customers used more natural gas than their daily nominations.

The Commission agrees with Spire. Mr. Godat provided informed testimony on this rather vague topic.

2k. Spire was faced with the choice of either shutting off natural gas to all of Symmetry's customers or buying additional gas to maintain their gas service.

Symmetry complains that Mr. Godat was unable to answer a question on this topic and instead deferred to another Spire employee, Justin Powers. Spire counters that Mr. Godat did testify at length latter in the deposition about the related topic of curtailment and Spire's cover purchases.

The Commission agrees with Symmetry that Mr. Godat was unprepared to offer testimony on this topic.

2l. Spire elected to do the right thing for the community by purchasing and delivering enough natural gas to cover for Symmetry's failure.

Symmetry complains that Mr. Godat was again unable to answer a question on this topic and instead deferred to Justin Powers. Spire contends Mr. Godat did answer other questions on this topic and that a single deferral to the knowledge of another employee does not justify the re-deposition of Mr. Godat.

The Commission agrees with Spire.

2m. Symmetry is charging its customers for gas Spire bought for them during the OFO period.

Symmetry complains that Mr. Godat was unable to explain the factual basis for this statement and instead indicates he is not aware of what Spire's counsel, Mr. Aplington, was considering when he made that statement in his September 17, 2021 letter. Spire replies that questions about Mr. Aplington's basis for the statement would intrude on attorney work product and mental impressions and would therefore be improper.

The Commission does not agree with Spire's objection. The topic proposed by Symmetry is asking for the factual basis of a statement of fact alleged by Spire's counsel in a letter to Symmetry. It is not asking for attorney work product or the attorney's mental impressions. Mr. Godat should have been prepared to testify as to the factual basis for Spire's statement.

3. Any analysis Spire engaged in concerning the issuance of the Operational Flow Order Spire issued on February 10, 2021, including why it was necessary, when it should be issued, and any internal discussions or communications with third parties about this topic.

Symmetry contends Mr. Godat on several occasions testified that he could not recall various details about the issuance of the OFO and instead deferred to other Spire employees. Spire replies that aside from the few particular questions described by Symmetry, Mr. Godat provides substantial testimony about the topic.

The Commission agrees with Spire. Mr. Godat was properly prepared to testify about this topic.

4. Any analysis Spire engaged in concerning the lifting of the ODO, including why it was lifted on February 20, 2021, why it was not lifted earlier, and any internal discussions or communications with third parties about this topic.

Symmetry contends Mr. Godat was unable to answer some questions about this topic and deferred to other Spire employees to provide details. Spire replies that aside from the few particular questions described by Symmetry, Mr. Godat provided substantial testimony about the topic.

The Commission agrees with Spire. Mr. Godat was properly prepared to testify about this topic.

6. The availability and use of storage gas by Spire in February 2021, including any decisions to draw from storage or to sell gas to third parties.

Symmetry contends Mr. Godat was unable to answer some questions about this topic and deferred to other Spire employees to provide details. Spire replies that aside from the few particular questions described by Symmetry, Mr. Godat provided substantial testimony about the topic.

The Commission agrees with Spire. Mr. Godat was properly prepared to testify about this topic.

7. Spire's sale of gas to Atmos Energy Corporation in February 2021, including any discussions, communications, or analysis concerning this topic.

Symmetry contends Mr. Godat was unable to answer questions about this topic and deferred to other Spire employees to provide details he should have known about. Spire replies that Mr. Godat did offer substantial testimony about this topic and that if Symmetry wants detailed facts about the negotiations with Atmos it should ask the Spire employee who was involved in the negotiations when he is deposed next week.

The Commission agrees with Symmetry on this point. Mr. Godat should have been better prepared to testify on this topic.

8. The process by which Spire engages in month-end balancing with Symmetry regarding monthly invoicing, including but not limited to the process as applied since November 2020.

Symmetry listed this issue as a topic for further questioning of Mr. Godat, but it does not cite to any specific questions to show that his initial deposition testimony was deficient. Spire notes Symmetry's failure to support the need for further questioning on this topic and contends that Mr. Godat provided knowledgeable testimony on this topic.

The Commission agrees with Spire regarding this topic.

9. Spire's document retention policies.

Symmetry describes this issue as the core of its concerns. Symmetry is concerned that it has not received the number of documents concerning communications among Spire employees and between Spire employees and gas marketers and other entities that it would expect to exist. It is concerned that such communications may have been deleted, destroyed, or improperly withheld from discovery. Spire replies that Mr. Godat did provide substantial testimony about Spire's document retention policies and that Symmetry's discovery concerns should be resolved through the pending motions to compel rather than through further depositions of Mr. Godat.

The Commission agrees with Symmetry's concerns. Mr. Godat testified about what Spire's document retention policy is in the abstract, but he was unable to testify about the details of how that policy was implemented in this circumstance. As indicated by the Court in *Reif v. Jamison,* Symmetry is entitled to the testimony of a corporate witness on that topic that can be imputed to the corporate defendant.

The Commission has found that Symmetry should be allowed to further depose Mr. Godat concerning topics 2k, 2m, 7, and 9. Symmetry's motion will be granted as to those topics.

THE COMMISSION ORDERS THAT:

1. Symmetry Energy Solutions, LLC's Motion to Compel Further Deposition Testimony from Spire Missouri, Inc.'s Corporate Representative is granted as to topic 2k, 2m, 7, and 9.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and Kolkmeyer CC., concur.
Rupp, C., absent.

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of The City of St. Robert and Laclede Electric Cooperative for Approval of a First Addendum to the Parties' Second Territorial Agreement Designating the Boundaries of Exclusive Service Areas Within Portions of Pulaski County	)))))))	**File No. EO-2022-0143**

REPORT AND ORDER APPROVING FIRST ADDENDUM TO SECOND TERRITORIAL AGREEMENT

CERTIFICATES

§55.2. Territorial agreements

Territorial agreements must be in writing pursuant to Section 247.172, RSMo (2016). The statute requires that approvals of territorial agreements be in the form of a Report and Order. The statute also provides that territorial agreements must not be detrimental to the public interest.

WATER

§11. Territorial agreements

Territorial agreements must be in writing pursuant to Section 247.172, RSMo (2016). The statute requires that approvals of territorial agreements be in the form of a Report and Order. The statute also provides that territorial agreements must not be detrimental to the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 23rd day of February, 2022.

In the Matter of the Application of The City of St. Robert and Laclede Electric Cooperative for Approval of a First Addendum to the Parties' Second Territorial Agreement Designating the Boundaries of Exclusive Service Areas Within Portions of Pulaski County	)))))))	**File No. EO-2022-0143**

REPORT AND ORDER APPROVING FIRST ADDENDUM TO SECOND TERRITORIAL AGREEMENT

Issue Date: February 23, 2022 Effective Date: March 25, 2022

This order approves the First Addendum to the Second Territorial Agreement between the City of St. Robert, Missouri (the City), and Laclede Electric Cooperative (the Cooperative) (collectively the "Joint Applicants").

Findings of Facts

1. The City is a fourth class city, organized and operating under Chapter 79 of the Revised Statutes of Missouri.[1] The City is engaged in the business of providing electrical and water utility services to the citizens of the City within city limits. The City is a political subdivision of the state of Missouri and is generally not subject to regulation by the Commission, but is subject to the Commission's jurisdiction for the purposes of this territorial agreement. The City's principal place of business is located at 194 Eastlawn Avenue, St. Robert, Missouri.

[1] All citations to RSMo are to the 2016 edition unless otherwise indicated.

2. The Cooperative is a rural electric cooperative organized under Chapter 394 of the Revised Statutes of Missouri (RSMo). The Cooperative provides electric service to customers located within the Cooperative's service area in all or parts of six Missouri counties, including Pulaski County. The subject property parcels lie within Pulaski County. The Cooperative is a political subdivision of the State of Missouri and is generally not subject to regulation by the Commission, but is subject to the Commission's jurisdiction for the purposes of this territorial agreement. The Cooperative's principal place of business is located at 1400 U.S. Route 66, Lebanon, Missouri.

3. On April 12, 2007, in File No. EO-2007-0315, the Commission approved the *Second Territorial Agreement* between the City and the Cooperative.[2]

4. On November 29, 2021, the City and the Cooperative jointly filed an application (Joint Application) seeking Commission approval of an addendum (First Addendum) to the existing *Second Territorial Agreement*. The First Addendum was filed in conjunction with the Joint Application and is attached hereto and its terms are incorporated by reference.

5. The Commission directed notice of the application, and set a deadline for submission of requests to intervene. No requests to intervene were filed.

6. The *Second Territorial Agreement* was filed as an exhibit on January 12, 2022, is attached hereto for reference, and authorized the Cooperative to serve anticipated new load on five parcels within the northeast portion of the City.

7. The First Addendum would allow the Cooperative to provide electrical service to three parcels of land within the city limits of the City. The agreement does not

[2] EO-2007-0315, *Report and Order Approving Territorial Agreement and Approving Stipulation and Agreement*, issued April 12, 2007.

require transfer of any customers, and there are no other known electrical suppliers serving the territory concerned.

8. On February 8, 2022, the Staff of the Commission (Staff) filed a recommendation advising the Commission to approve the First Addendum. No one has filed an objection, nor has anyone requested a hearing.

9. The Cooperative currently has a three-phase feeder circuit routed in the immediate vicinity, which Staff agreed is sufficient to meet the expected load additions of the three parcels.

10. The City does not have sufficient facilities to provide the anticipated electric service requirements desired by the landowners of the three parcels.

Conclusions of Law

A. The Cooperative is a rural electric cooperative organized under Chapter 394 RSMo, to provide electric service to its members in Missouri.

B. The City is a fourth class city, organized and operating under Chapter 79 of the Revised Statutes of Missouri.

C. Section 394.312, RSMo, establishes that the Commission has jurisdiction over territorial agreements between electrical corporations, rural electric cooperatives, and municipally owned utilities.

D. Sections 394.312.3 and 394.312.5, RSMo, state the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

E. Section 394.312.5, RSMo, requires an evidentiary hearing unless the matter is resolved between the parties.

Decision

The Commission finds that the parties have agreed to the First Addendum and no person has objected nor requested a hearing. The Commission concludes the First Addendum in total is not detrimental to the public interest and will be approved.

THE COMMISSION ORDERS THAT:

1. The First Addendum to the *Second Territorial Agreement* between the City and the Cooperative is approved, is incorporated herein by reference, and is included with this order as an attachment. The signatories are ordered to comply with the terms of the First Addendum.

2. The City and the Cooperative are authorized to do such other acts and things, including making, executing, and delivering any and all documents that may be necessary, advisable, or proper to effect the terms and conditions of the First Addendum and to implement the authority granted by the Commission in this order.

3. This order shall become effective on March 25, 2022.

4. This file shall be closed on March 26, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Hatcher, Regulatory Law Judge

APPENDIX A

FIRST ADDENDUM

TO THE

SECOND TERRITORIAL AGREEMENT

THIS ADDENDUM is made and entered into as of this 16th of November 2021, by and between the CITY OF ST. ROBERT, MISSOURI, a political subdivision of the 4th Class organized and existing under the laws of Missouri with its principal office located at 194 Eastlawn Ave., St. Robert, Missouri ("St. Robert") and LACLEDE ELECTRIC COOPERATIVE, a Missouri rural electric cooperative organized and existing pursuant to Chapter 394, RSMo. with its office located at 1400 E. Route 66, Lebanon, Missouri ("Laclede").

WITNESSETH:

WHEREAS, this Addendum does not require any customer of either St. Robert or Laclede to change its supplier;

NOW, THEREFORE, St. Robert and Laclede, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. **Definitions.** Unless otherwise defined in this Addendum, capitalized terms shall have the same meaning as ascribed to them in the Second Territorial Agreement.

2. **Effective Date** - Effective date of this Addendum shall be the effective date of the order issued by the Commission pursuant to Section 394.312 RSMo. approving this Addendum.

3. **Structures to Be Served-** The only New Structures to be served under this Addendum are structures to be constructed or erected within and upon the property described in the **First Amended Exhibit A** attached hereto.

4. **Party to Serve Structures-** From and after the Effective Date, Cooperative shall

serve the Parcels and structures constructed or erected within and upon said Parcels and property shall be added to Cooperative's Exclusive Service Area by **First Amended Exhibit A** to this Addendum. The Addendum will have no effect whatsoever upon electric service by Company or Cooperative to any Structure other than those constructed or erected within and upon the Parcels.

5. **Justification for Addendum-** This Addendum will promote efficiencies in providing services to the City of St. Robert as it requires no duplication of electric service facilities as the Cooperative presently has facilities located adjacent parcels serving this same consumer/member from which it could provide electric service, and the City does not have facilities located in the immediate vicinity of the parcels from which it could provide electric service. This Addendum and addition of the parcels to the exclusive service area of Cooperative will bring efficiencies and savings to the City of St. Robert. Both parties agree that the Addendum is in the public interest.

6. **Condition Precedent - Regulatory Approvals –**

6.1 This Addendum is conditioned upon receipt of approval by the Commission with no changes, or those changes which have been expresslyagreed to by City and Cooperative. Either party reserves the right to file an application for rehearing or other pleading with the Commission prior to the effective date of a Commission order approving this Addendum if the party objects to the form or content of the Commission's order approving the Addendum. If neither party files such an application for rehearing or other pleading prior to the effective date of the Commission order approving the Addendum, it shall be presumed that the approval is satisfactory in form and content to both parties.

6.2 City and Cooperative agree that they shall submit this Addendum to the Commission for its approval and shall submit therewith the verified statements and justification as required by the terms of the Territorial Agreement.

6.3 City and Cooperative agree that Cooperative is authorized to commence

providing electrical service to the property at any time on a temporary basis, pending approval by the Commission of this Addendum, in accordance with the terms of the First Addendum to the Second Territorial Agreement. Nothing in this provision shall be deemed to limit City's ability to provide electrical service to the property on a permanent basis in the event the Commission disapproves or fails to approve the Addendum.

7. **Term** - The term of this Addendum shall be the same as that of the Territorial Agreement to which this Addendum relates. Nothing contained herein shall be construed to terminate this Addendum prior to expiration or termination of the Territorial Agreement, or to extend the provisions hereof beyond expiration or termination of the Territorial Agreement.

8. **Cooperation** – City and Cooperative agree to undertake all actions reasonably necessary to implement this Addendum. City and Cooperative will cooperate in presenting a joint application to the Commission demonstrating that this Addendum is in the public interest. Cooperative shall pay any costs assessed by the Commission for seeking administrative approval of this Addendum. All other costs, including but not limited to the attorney's fees of each party, will be borne by the respective party incurring the costs.

9. **Modifications** - Neither the provisions regarding service to the Structures described in the Addendum nor any provision of this Addendum shall be modified or repealed except by a signed writing of the parties which is approved by applicable regulatory authorities.

10. **Survival** - This Addendum shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

11. **Lack of Approval or Termination** - If the Commission or any other regulatory authority having jurisdiction does not approve this Addendum, or if the Condition Precedent is not fulfilled, this Addendum shall be nullified and of no legal effect

between the parties, except as to providing authority for any temporary provision of electrical service undertaken by Cooperative during the period in which Commission approval was pending. If this Addendum is terminated pursuant to its terms, it shall thereafter be nullified and of no further legal effect except as may be necessary to govern disputes concerning situations existing prior to such termination. Further, if any part of this Addendum is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

12. Termination - This Addendum may be terminated by either party in the manner set forth in the Territorial Agreement for termination of the Territorial Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum on the date first above written.

St. Robert, Missouri

11/16/(19)97

Title: Interim City Clerk

Attest: _____

Laclede Electric Cooperative

Marc C. Roecker

By: Marc Roecker

Title: CEO General Manager

Attest: _____

FIRST AMENDED EXHIBIT A

Legal Description of the Parcels:

Parcel 1:

All that part of the Southwest quarter of the Northeast quarter of Section 33, Township 36 North, Range 11 West of 5th P.M. described as follows: Beginning at the Northwest corner of said Southwest quarter of Northeast quarter; thence East 210 feet along the North line of said Southwest quarter of Northeast quarter to the true point of beginning of the tract herein described; thence South 210 feet; thence East 420 feet; thence North 210 feet to the North line of said Southwest quarter of Northeast quarter; thence West 420 feet along the North line of said Southwest quarter of Northeast quarter to the true point of beginning of the tract herein described; containing 2 acres, more or less. Subject to any easements of record and subject to any existing roads and utilities.

Parcel 2:

A fractional part of the Southwest quarter of the Northeast quarter of Section 33, Township 36 North, Range 11 West of 5th P.M. described as follows: Commencing at the Southwest corner of the Southwest quarter of the Northeast quarter of said Section 33; thence North 1° 01' 10" East 630.00 feet along the West line of said Southwest quarter of the Northeast quarter to the true point of beginning of the hereinafter described tract: Thence South 88° 09' 10" East 210.0 feet; thence North 1° 02' 10" East 29.41 feet to the South line of the North half of the Southwest quarter of the Northeast quarter; thence South 88° 09' 10" East 678.87 feet along said South line; thence North 1° 23' 20" East 284.92 feet; thence North 88° 09' 10" West 672.64 feet to the northeast corner of a parcel described in Pulaski County Deed Records at Document No. 1997-6059; thence South 1° 05' 30" West 104.85 feet along the East line of said Document No. 1997-6059 parcel to its southeast corner; thence North 88° 01' 20" West 217.89 feet along the South line of said Document No. 1997-6059 parcel to the aforesaid West line of the Southwest quarter of the Northeast quarter; thence South 1° 02' 10" West 210.00 feet along said West line to the true point of beginning. Above described tract contains 5.44 acres, more or less, per plat of survey R-8040, dated January 6, 1998 made by Elgin Surveying & Engineering,Inc. Subject to any easements of record and subject to any existing roads and utilities.

Parcel 3:

All that part of the Southwest quarter of Northeast quarter of Section 33, Township 36 North, Range 11 West of 5th P.M. described as follows: Beginning at the Northeast corner of said Southwest quarter of Northeast quarter; thence South 1° 23' 10" West 662.14 feet along the East line of said Southwest quarter of Northeast quarter to the Southeast corner of the North half of the Southwest quarter of Northeast quarter of said Section 33; thence North 88° 09' West 1120.6 feet along the South line of said North half of Southwest quarter of Northeast quarter to the East line of parcel described in instrument recorded in Book 165, Page 179 in the Recorder's Office of Pulaski County, Missouri; thence South 30.05 feet along the East line of said parcel described in Book 165, Page 179 to the Southeast corner of that parcel; thence West 210 feet along the South line of said parcel described in Book 165, Page 179 to the West line of said Southwest quarter of Northeast quarter; thence North 210 feet along the West line of said Southwest quarter of Northeast quarter to the Northwest corner of said parcel described in Book 165, Page 179; thence East 210 feet along the North line of said parcel described in Book 165, Page 179 to the Northeast corner of that parcel and also to the Southeast corner of parcel described in instrument recorded in Book 344, Page 190 in said Recorder's Office; thence North 1° 05' 20" East 104.87 feet along the East line of said parcel described in Book 344, Page 190 to the Northeast corner of that parcel; thence North 88° 05' West 159.19 feet along the North line of said parcel described in Book 344, Page 190 to the Southeast corner of parcel described in instrument recorded in Book 314, Page 249 in said Recorder's Office; thence North 0° 18' 40" West 374.18 feet along the East line of said parcel described in Book 314, Page 249 to the North line of said North half of Southwest quarter of Northeast quarter; thence South 87° 47' 40" East 70.79 feet, and South 88° 03' 40" East 89.21 feet along the North line of said North half of Southwest quarter of Northeast quarter to the Northwest corner of parcel described in instrument recorded in Book 181, Page 455 in said Recorder's Office; thence South 1° 02' 10" West 210.0 feet along the West line of said parcel described in Book 181, Page 455 to the Southwest corner of that parcel; thence South 88° 24' 30" East 420.0 feet along the South line of parcels described in instruments recorded in Book 181, Page 455 and in Book 189, Page 465 in said Recorder's Office to the Southeast corner of said parcel described in Book 189, Page 465; thence North 1° 02' 10" East 210.0 feet along the East line of said parcel described in Book 189, Page 465 to the North line of said North half of Southwest quarter of Northeast quarter; thence South 88° 18' 10" East 712.79 feet along the North line of said North half of Southwest quarter of Northeast quarter to the point of beginning. Description derived from survey (R-6302) made by Elgin Surveying & Engineering, Inc. and revised under date of October 14, 1994. EXCEPT that part conveyed to Maranatha Baptist Church of St. Robert by instrument recorded as Document #1998 594 in said Recorder's Office. Subject to any easements and restrictive covenants of record.

Map of the parcels:

SECOND TERRITORIAL AGREEMENT

THIS AGREEMENT is made and entered into as of this 5 day of Feb, 2007, by and between the CITY OF ST. ROBERT, MISSOURI, a political subdivision of the 4th Class organized and existing under the laws of Missouri with its principal office located at 194 Eastlawn Ave., St. Robert, Missouri ("St. Robert") and LACLEDE ELECTRIC COOPERATIVE, a Missouri rural electric cooperative organized and existing pursuant to Chapter 394, RSMo. with its office located at 1400 E. Route 66, Lebanon, Missouri ("Laclede").

WITNESSETH:

WHEREAS, St. Robert and Laclede are authorized by law to provide electric service within certain areas of Missouri, including portions of Pulaski County; and

WHEREAS, Sections 394.312 and 416.041 RSMo. 2000, provides that competition to provide retail electrical service as between rural electric cooperatives such as Laclede and electrical corporations such as St. Robert may be displaced by written territorial agreements;

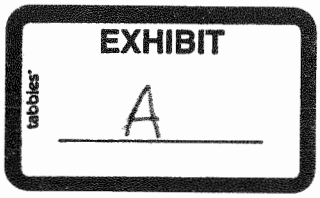
WHEREAS, St. Robert and Laclede desire 1) to promote the orderly development of retail electrical service within a portion of St. Robert, Pulaski County, Missouri, 2) to avoid unnecessary duplication of electrical facilities therein, and 3) to most effectively avail themselves of prior investment and planning for serving the public; and

WHEREAS, this Second Territorial Agreement does not require any customer of either St. Robert or Laclede to change its supplier;

NOW, THEREFORE, St. Robert and Laclede, in consideration of the mutual covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, agree as follows:

1. Description of Territory Affected.

A. This Agreement pertains only to five (5) parcels of land in Pulaski County, Missouri, which collectively comprise additional phases of the residential development known as



"Hickory Valley." For purposes of this Agreement, the separate additions shall be referred to as "Phases 7, 8, 9, 10, and 11."

B. The legal descriptions of Phases 7, 8, 9, 10, and 11 of the Hickory Valley subdivision are attached hereto as Exhibits A, B, C, D, and E, respectively. The developer's plat maps will be made available to staff of the Commission upon its review.

C. This Agreement shall have no affect whatsoever upon service by Laclede or St. Robert in any areas other than Phases 7, 8, 9, 10, and 11 of the Hickory Valley subdivision.

D. The Hickory Valley subdivision of St. Robert is located within the corporate limits of the City of St. Robert, Missouri, and thus is not a "rural area" as defined by Section 394.020(3) RSMo. 2000.

2. Definitions.

A. For purposes of this Agreement, the references to "structure" have the same meaning as the statutory definition of the term "structure" found in Sections 393.106 and 394.315 RSMo. in effect at the relevant time. In the event no such statutory definitions exist or are not otherwise applicable, the term shall be construed to give effect to the intent of this agreement which is to designate an exclusive provider, as between the parties hereto, of retail electric service for anything using or designed to use electricity that is located within the Service Areas described herein.

B. The term "permanent service" shall have the same meaning as the definition of "permanent service" found in Section 394.315 RSMo., in effect at the relevant time. The term shall be liberally construed to give effect to the expressed intent of this Agreement.

C. The term "new structure" shall mean (i) one on which construction has not commenced by the Effective Date, or (ii) one on which construction has commenced by the Effective Date but on the Effective Date is not complete from the standpoint that permanent wiring for the electrical power and energy to be utilized by or within in the structure has not been permanently installed and permanently energized by physical connection to the facilities of an electrical supplier, or (iii) one for which the respective electrical inspection authority has not

granted a permit by the Effective Date for it to be energized, or (iv) one for which the respective building authority has not granted an occupancy permit by the Effective Date.

D. The term "Effective Date" shall mean 12:01 a.m. of the date on which the Report and Order of the Commission approving this Agreement is effective pursuant to the terms of such Report and Order, unless a writ of review or other proceeding is taken challenging the Report and Order, in which case there shall be no Effective Date of this Agreement until St. Robert and Laclede both execute a document which establishes an Effective Date for purposes of this Agreement.

3. Exclusive Service Areas Established.

A. Laclede, pursuant to this Second Territorial Agreement, shall be entitled to provide permanent service to all structures now located within Phases 7, 8, 9, 10, and 11 of the Hickory Valley subdivision and all new structures within Phases 7, 8, 9, 10, and 11 of the Hickory Valley subdivision and therefore it shall be considered the exclusive Service Area of Laclede, as between St. Robert and Laclede. St. Robert does not now serve any structures, and shall not be allowed to serve any new structures, within Phases 7, 8, 9, 10, and 11 of the Hickory Valley subdivision.

B. This Agreement does not purport to affect the rights of any electric supplier not a party to this Agreement.

4. Condition Precedent – Regulatory Approvals. This Agreement is conditioned upon receipt of approval of it by the Commission with no changes, or those changes which have been expressly agreed to by St. Robert and Laclede. Either party may file an application for rehearing or other document with the Commission prior to the effective date of a Commission order approving this Agreement if the party objects to the form or content of the Commission's order approving the Agreement. If neither party files such an application for rehearing or document prior to the effective date of the Commission order approving this Agreement, it shall be presumed that the approval is satisfactory in form and content to both parties.

5. Service to Structures Receiving Service as of the Date of this Agreement. There are currently no structures located within Phases 7, 8, 9, 10, and 11 on the date of this Agreement

that are receiving permanent electric service. To the knowledge of St. Robert and Laclede, there are no other suppliers of electricity providing permanent electric service within the subdivision.

6. Structures Coming Into Existence After the Effective Date.

A. After the Effective Date, Laclede shall have the exclusive right, as between St. Robert and Laclede, to provide permanent service to new structures within Phases 7, 8, 9, 10, and 11.

B. During interim period between the date of execution of this Agreement and the Effective Date, the parties shall abide by the territorial division provisions of this Agreement and may provide provisional service to any customer seeking service. Pending the issuance of a decision by the Commission either granting or denying approval of this Agreement, however, neither party shall construct primary or secondary electric facilities within the territory assigned exclusively to the other pursuant to this Agreement, unless (i) ordered to do so by the Commission or a court of competent jurisdiction or (ii) as a necessary part of the provision of service to its customers in other areas and such construction is within a previously established easement obtained for the purpose of providing service in other areas. In the interim before this Agreement is approved by the Commission, if a new structure should come into existence on one side of the proposed boundary and request service from the party on the opposite side of the boundary, and that party has existing right to provide such service, the parties agree to submit the matter to the Commission for determination in the case docketed for approval of this Agreement. The parties agree to propose to the Commission in such case that the party which will have the exclusive right to serve the customer if this Agreement is approved by the Commission should have the exclusive right and obligation to serve the customer in the interim.

7. Indirect Provision of Service to Structures Not Permitted. The intent of this Agreement is to designate an exclusive provider of electric service for structures or anything else using or designed to use electricity to be located within the described areas. Neither party shall furnish, make available, assist in providing, render or extend electric service to a structure, which that party would not be permitted to serve directly pursuant to this Agreement, by indirect means such as through a subsidiary corporation, through another entity, or by metering services outside

of the area for delivery within the area. This shall not be construed to otherwise prohibit sales of electric power and energy between the parties to this Agreement.

8. Term. The initial term of this Agreement shall be twenty (20) years from and after the Effective Date ("initial term"). Thereafter, this Agreement shall be automatically renewed for successive five (5) year terms ("renewal terms") commencing on the anniversary of the Effective Date ("renewal date") unless either party hereto shall notify the other party in writing of its intent to terminate this Agreement at least one (1) year in advance of any such renewal date. The parties agree that a copy of any notice of termination of this Agreement shall be simultaneously served upon the Executive Secretary of the Commission and the Office of the Public Counsel. Termination of this Agreement shall eliminate the exclusive service territories provided for herein, but shall not entitle a party to provide service to a structure lawfully being served by the other party, or allow a change of supplier to any structure in the other's Service Area hereunder, unless such a change is otherwise permitted by law.

9. Cooperation. St. Robert and Laclede agree to undertake all actions reasonably necessary to implement this Agreement. St. Robert and Laclede will cooperate in presenting a joint application to the Commission demonstrating that this Agreement is in the public interest. Laclede shall pay all the costs assessed by the Commission for seeking administrative approval of this Agreement. All other costs, including but not limited to the attorneys fees of each party, will be borne by the respective party incurring the costs.

10. General Terms.

A. Land Descriptions: The land descriptions utilized in this Agreement are assumed by the parties to be accurate and reliable and to match the maps being submitted; however, where there are maps and the map does not correspond with the metes and bounds description, the map shall be controlling.

B. No Constructive Waiver: No failure of St. Robert or Laclede to enforce any provision hereof shall be deemed to be a waiver.

C. Modifications: Neither the boundaries described in this agreement nor any provision of this Agreement may be modified or repealed except by a signed writing of the parties which is approved by all applicable regulatory authorities.

D. Survival: This Agreement shall inure to the benefit and be binding upon the parties, their respective successors and assigns.

E. Lack of Approval or Termination: If the Commission or any other regulatory authority having jurisdiction does not approve this Agreement, this Agreement shall be nullified and of no legal effect between the parties. If this Agreement is terminated pursuant to its terms, it shall thereafter be nullified and of no further legal effect except as may be necessary to govern disputes concerning situations existing prior to such termination. Further, if any part of this Agreement is declared invalid or void by a court or agency of competent jurisdiction, then the parties shall replace such provision as similarly as possible to the provision which was declared invalid or void so as to return each of them, as much as practical, to the status quo prior to the declaration.

F. This Agreement shall not be construed to prevent either party from obtaining easements or right of way through or in any part of the Service Area of the other if the acquisition of such easement or right of way is reasonably necessary to or desirable for the performance of the party's duties to provide electric service to its customers in other areas.

G. The subsequent platting, re-platting, subdividing, re-subdividing, or re-naming of any parcel or subdivision covered by this Agreement shall not affect the respective rights of St. Robert or Laclede established by this Agreement.

11. Subsequent Legislation. This Agreement is reached between the parties based upon their understanding of the current state of the law in Missouri under Section 394.315 RSMo. 2000, which allows an electrical supplier, once it lawfully commences supplying retail electric energy to a structure through permanent service facilities, to have the right to continue serving such structure. Further, the concept of service under those sections at the current time contemplates not only the physical provision of the conductors to provide an electrical path and connection between the structure and the conductors of the electrical supplier, but also the provision of electrical power and energy through such conductors. In the event the law in

Missouri is changed during any term of this Agreement to provide that the provider of the electrical facilities (i.e. conductors) within the Service Area is not also required or assumed to be the provider of electrical power and energy (i.e., the electricity), and thereby give customers a choice as to who provides their electricity, as contrasted with who owns the wires over which such electricity is provided, then nothing in this Agreement shall be construed to prohibit St. Robert from providing electrical power and energy to structures within the Service Area of Laclede established by this Agreement, or Laclede from providing electrical power and energy to structures within the Service Area of St. Robert established by this Agreement, under the terms of such future legislation, notwithstanding the terms of this Agreement to the contrary. However, if either § 394.315 or § 394.312 RSMo. are repealed and not reenacted in a form substantially equivalent to their status on the Effective Date, this Agreement shall terminate, coincident with the effective date of the elimination of the current content of § 394.315 or § 394.312, as the case may be.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 5 day of Feb, 2007.

CITY OF ST. ROBERT, MISSOURI

By: George Sander

Title: MAYOR

Attest:

(seal)

LACLEDE ELECTRIC COOPERATIVE

By: Kenneth R. Miller

Title: General Manager

Attest: Glenda Powell

(seal)

Hickory Valley Seventh Addition Boundary Description:

A part of the SE ¼ of the SW ¼ and the SW ¼ of the SE ¼ of Section 14, and a part of the NE ¼ of the NW ¼ of Section 23, all in Township 36 North, Range 11 West of the 5th P.M., St. Robert, Pulaski County, Missouri, described as follows: Beginning at an iron pin at the SW Corner of the SE ¼ of Section 14, identical with the Northernmost corner of Lot 53 of HICKORY VALLEY FIRST ADDITION (AMENDED), Thence along the Westerly boundary line of HICKORY VALLEY FIRST ADDITION (AMENDED), S 82°49'45" W (basis of bearing based on Geodetic North) 83.74 feet to an iron pin, Thence S 44°13'35" W 216.52 feet to an iron pin, Thence S 45°46'25" E 75.91 feet an iron pin, Thence S 18°58'45" W 438.30 feet to an iron pin, Thence S 81°51'36" W 119.22 feet to an iron pin at the Northwest corner of Lot 61, Thence leaving said Westerly boundary line, N 70°26'42" W 152.25 feet to an iron pin, Thence along a curve to the left with a chord bearing and length of N 15°33'54" E 107.85 feet to an iron pin, Thence N 11°34'31" E 167.68 feet to an iron pin, Thence along a curve to the right with a chord bearing and length of N 24°18'19" E 134.42 feet to an iron pin, Thence N 37°02'08" E 185.02 feet to an iron pin, Thence N 52°57'52" W 106.53 feet to a iron pin on the South line of Section 14, Thence Westerly along said South line, N 89°31'59" W 224.65 feet to an iron pin, Thence leaving said South line, N 38°03'53" E 1145.40 feet to an iron pin, Thence S 53°27'00" E 205.01 feet to an iron pin on the Westerly Right-of-way line of Valley Drive, identical with the Southeasterly corner of Lot 1 of HICKORY VALLEY SECOND ADDITION, Thence with said Westerly Right-of-way line S 38°25'33" W 36.29 feet to an iron pin, Thence leaving said Westerly Right-of-way line, S 51°58'27" E 50.00 feet to an iron pin on the Easterly Right-of-way line of Valley Drive, identical with the Southwesterly corner of Lot 14 of HICKORY VALLEY SECOND ADDITION, Thence leaving said Easterly Right-of-way line along the boundary line of HICKORY VALLEY SECOND ADDITION, S 51°58'27" E 104.07 feet to an iron pin at the common corner of Lots 14 and 17 of HICKORY VALLEY SECOND ADDITION, Thence S 47°44'50" E 85.23 feet to an iron pin at the common corner of Lots 15 and 17 of HICKORY VALLEY SECOND ADDITION, identical with the common corner of Lots 34 and 59 of HICKORY VALLEY FIRST ADDITION (AMENDED), Thence along the Westerly boundary line of HICKORY VALLEY FIRST ADDITION (AMENDED), S 31°22'53"W 708.04 feet to the point of beginning. Description per survey number I-0306 by Integrity Engineering, Inc., April 25, 2006. Containing 14.47 acres.

Hickory Valley Eighth Addition Boundary Description:

A part of the SE ¼ of the SE ¼ of the NE ¼ of Section 22, and a part of the SW ¼ of the NW ¼ of Section 23, all in Township 36 North, Range 11 West of the 5th P.M., St. Robert, Pulaski County, Missouri, described as follows: Commencing at an iron pin at the SE Corner of the SW ¼ of the NW ¼ of Section 23, Thence Westerly along the South line of the SW ¼ of the NW ¼ , N 89°24'16" W 449.73 feet to an iron pin at the SW corner of HICKORY VALLEY NINTH ADDITION and the point of beginning, Thence continuing along said South line N 89°24'16" W 873.15 feet to an aluminum monument at the SW corner of the NW ¼ of Section 23, Thence along the South line of the SE ¼ of the SE ¼ of the NE ¼ of Section 22, N 89°06'05" W 676.86 feet to an iron pin at its' SW corner, Thence along the West line of the SE ¼ of the SE ¼ of the NE ¼ of Section 22, N 00°07'02" W 450.50 feet to an iron pin, Thence leaving said West line, N 86°17'51" E 219.01 feet to an iron pin, Thence S 87°48'00" E 570.14 feet to an iron pin, Thence S 66°11'08" E 294.26 feet to an iron pin, Thence S 71°57'32" E 151.44 feet to an iron pin, Thence N 70°42'28" E 230.71 feet to an iron pin on the West line of HICKORY VALLEY NINTH ADDITION, Thence with said West line, S 19°26'03" E 395.47 feet to the point of beginning. Description per survey number I-xx07 by Integrity Engineering, Inc., January xx, 2007. Containing 14.05 acres.

Hickory Valley Ninth Addition Boundary Description:

A part of the N ½ of the NW ¼ and the SW ¼ of the NW ¼ of Section 23, Township 36 North, Range 11 West of the 5th P.M., St. Robert, Pulaski County, Missouri, described as follows: Beginning at an iron pin at the SE Corner of the SW ¼ of the NW ¼ of Section 23; Thence with the South line of the NW ¼ of Section 23, N 89°24'16" W (basis of bearing based on Geodetic North) 449.73 feet to an iron pin; Thence leaving said South line, N 19°26'03" W 746.44 feet to an iron pin; Thence N 21°20'04" E 356.80 feet to an iron pin; Thence N 28°59'25" E 286.72 feet to an iron pin; Thence N 45°57'54" E 365.78 feet to an iron pin; Thence N 63°22'25" E 670.39 feet to an iron; Thence N 19°34'18" E 305.79 feet to an iron pin; Thence N 22°27'26" W 272.28 feet to an iron pin on the Southeasterly line of a parcel described in document number 1997-5182, Pulaski County Records; Thence with said Southeasterly line, N 45°40'08" E 232.39 feet to an iron pin; Thence N 19°22'24" E 83.91 feet to an iron pin on the North line of Section 23; Thence with said North line, S 89°31'59" E 258.49 feet to an iron pin at the SW corner of Lot 49 of HICKORY VALLEY SEVENTH ADDITION; Thence leaving said North line, along the South line of Lot 49 of HICKORY VALLEY SEVENTH ADDITION, S 52°57'52" E 106.53 feet to an iron pin at its' SE corner on the West Right-of-way line of Valley Drive; Thence with said West Right-of-way line, S 37°02'08" W 185.02 feet to an iron pin; Thence along a curve to the left with a chord bearing and length of S 24°18'19" W 134.42 feet to an iron pin; Thence S 11°34'31" W 167.68 feet to an iron pin; Thence along a curve to the right with a chord bearing and length of S 15°33'54" W 107.85 feet to an iron pin on the South line of HICKORY VALLEY SEVENTH ADDITION; Thence leaving said West Right-of-way line, along the South line of HICKORY VALLEY SEVENTH ADDITION, S 70°26'42" E 50.00 feet to an iron pin on the East Right-of-way line of Valley Drive; Thence leaving said East Right-of-way line, along the South line of HICKORY VALLEY SEVENTH ADDITION, S 70°26'42" E 102.25 feet to an iron pin at a corner of Lot 67 of HICKORY VALLEY SEVENTH ADDITION, identical with the NW corner of Lot 61 of HICKORY VALLEY FIRST ADDITION (AMENDED); Thence leaving the South line of HICKORY VALLEY SEVENTH ADDITION, along the West line of Lot 61 of HICKORY VALLEY FIRST ADDITION (AMENDED), S 00°06'30" E 352.18 feet to an iron pin at its' SW corner, identical with the NW corner of a parcel described in document number 1996-2074 and the NE corner of a parcel described in document number 1996-2075, Pulaski County Records; Thence leaving said West line, along the North line of said document number 1996-2075 parcel, S 67°03'51" W 226.02 feet to an iron pin at its' NW corner, identical with the NE corner of a parcel described in document number 1997-2722, Pulaski County Records; Thence with the North line of said document number 1997-2722 parcel, S 66°43'44" W 445.93 feet to an iron pin at its' NW corner; Thence with the West line of said document number 1997-2722 parcel, S 00°04'39" W 41.77 feet to an iron pin at a corner of said document number 1997-2722 parcel on the South line of the N ½ of the NW ¼ of Section 23, identical with a corner of a parcel described in book 420, page 24, Pulaski County Records; Thence with said South line, along the North line of said book 420, page 24 parcel, N 89°28'08" W 267.51 feet to an iron pin at its' NW corner, identical with the NE corner of the SW ¼ of the NW ¼ of Section 23; Thence with the East line of the

SW ¼ of the NW ¼ of Section 23 and the West line of said book 420, page 24 parcel and the West line of a parcel described in document number 2003-0276, Pulaski County Records, S 00°04'08" E 1316.44 feet to the point of beginning. Description per survey number I-3006 by Integrity Engineering, Inc., December 12, 2006.
Containing 32.17 acres.

HICKORY VALLEY TENTH ADDITION BOUNDARY DESCRIPTION
(Tract "B" Survey Number I-5105)

A part of the NW ¼ of the SE ¼ of Section 14, Township 36 North, Range 11 West of the 5th P.M., Pulaski County, Missouri, described as follows: Beginning at an iron pin at the NE corner of the NW ¼ of the SE ¼ of Section 14, Thence Southerly along the East line of the NW ¼ of the SE ¼ of Section 14, S 00°09'13" W (basis of bearing based on Geodetic North) 561.65 feet to an iron pin at the intersection with the Northerly Boundary line of HICKORY VALLEY SIXTH ADDITION, Thence leaving said East line along the Northerly Boundary line of HICKORY VALLEY SIXTH ADDITION, N 63°37'21" W 375.19 feet to an iron pin, Thence S 46°45'17" W 172.14 feet to an iron pin at a common corner of Lot 10 of HICKORY VALLEY SIXTH ADDITION and Lot 26 of HICKORY VALLEY FIFTH ADDITION, Thence leaving said Northerly Boundary line of HICKORY VALLEY SIXTH ADDITION along the Easterly Boundary line of HICKORY VALLEY FIFTH ADDITION, N 52°59'47" W 399.54 feet to an iron pin, Thence N 50°10'51" W 83.63 feet to an iron pin, Thence N 05°54'48" E 113.55 feet to an iron pin on the Southerly Right-of-way line of Green Valley Circle, Thence leaving said Southerly Right-of-way line N 08°50'34" E 51.37 feet to an iron pin on the Northerly Right-of-way line of Green Valley Circle, Thence leaving said Northerly Right-of-way line, N 00°29'15" E 61.45 feet to an iron pin at the intersection with the North line of the NW ¼ of the SE ¼ of Section 14, Thence leaving said Easterly Boundary line Easterly along said North line, S 89°33'50" E 826.23 feet to the point of beginning. Description per survey number I-5105 by Integrity Engineering, Inc., December 15, 2005. Containing 8.25 acres.

Hickory Valley Eleventh Addition Boundary Description:

A part of the NW ¼ of the NW ¼ and the SW ¼ of the NW ¼ of Section 23, Township 36 North, Range 11 West of the 5th P.M., St. Robert, Pulaski County, Missouri, described as follows: Commencing at an aluminum monument at the NW Corner of Section 23; Thence with the West line of Section 23, S 00°09'02" E (basis of bearing based on Geodetic North) 411.32 feet to an iron pin at the SW corner of a parcel described in document number 2001-6082, Pulaski County Records, and the point of beginning; Thence leaving said West line, along the South line of said document number 2001-6082 parcel, S 89°30'24" E 241.61 feet to an iron pin at the intersection with the North Right-of-way line of Hardin Lane, as located December 2006; Thence leaving said South line and leaving said North Right-of-way line, S 05°52'03" W 52.99 feet to an iron pin on the South Right-of-way line of Hardin Lane, as located December 2006; Thence leaving said South Right-of-way line, S 10°58'22" E 272.91 feet to an iron pin; Thence S 07°21'51" W 212.63 feet to an iron pin; Thence S 64°01'28" E 783.63 feet to an iron pin on the West line of HICKORY VALLEY NINTH ADDITION; Thence with the West line of HICKORY VALLEY NINTH ADDITION, S 45°57'54" W 91.81 feet to an iron pin; Thence S 28°59'25" W 97.77 feet to an iron pin on the North Right-of-way line of Chestnut Drive, as located December 2006; Thence leaving said North Right-of-way line, along the West line of HICKORY VALLEY NINTH ADDITION, S 28°59'25" W 60.00 feet to an iron pin on the South Right-of-way line of Chestnut Drive, as located December 2006; Thence leaving said South Right-of-way line, along the West line of HICKORY VALLEY NINTH ADDITION, S 28°59'25" W 128.95 feet to an iron pin; Thence S 21°20'04" W 56.03 feet to an iron pin; Thence leaving said West line, N 56°38'30" W 673.07 feet to an iron pin; Thence S 88°57'28" W 175.54 feet to an iron pin on the West line of Section 23; Thence with said West line, N 00°09'02" W 876.70 feet to the point of beginning. Description per survey number I-3206 by Integrity Engineering, Inc., December 15, 2006. Containing 11.19 acres.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's 2021 Triennial Compliance Filing Pursuant to 20 CSR 4240-22	)))	**File No. EO-2021-0035**
In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's 2021 Triennial Compliance Filing Pursuant to 20 CSR 4240-22	)))	**File No. EO-2021-0036**

ORDER APPROVING 2021 TRIENNIAL INTEGRATED RESOURCE PLAN

ELECTRIC

§42. Planning and management
The Commission directed the electric utility to address specified planning issues in its next Integrated Resource Plan (IRP) filing.

§42. Planning and management
The Commission declined to issue a scheduling conference before it is determined whether a hearing is necessary, pursuant to 20 CSR 4240-22.080(10).

§42. Planning and management
An Integrated Resource Plan (IRP) filing is a non-contested case.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 9th day of March, 2022.

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's 2021 Triennial Compliance Filing Pursuant to 20 CSR 4240-22	)))	**File No. EO-2021-0035**
In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's 2021 Triennial Compliance Filing Pursuant to 20 CSR 4240-22	)))	**File No. EO-2021-0036**

ORDER APPROVING 2021 TRIENNIAL INTEGRATED RESOURCE PLAN

Issue Date: March 9, 2022 Effective Date: April 8, 2022

On April 30, 2021, Evergy Metro, Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc., d/b/a Evergy Missouri West (collectively Evergy or "the Companies") filed their 2021 Integrated Resource Plans (IRP) with the Public Service Commission. The filing of those plans is required by Chapter 20 CSR 4240-22, Electric Utility Resource Planning. On September 27, 2021, the Staff of the Commission (Staff) filed its report, and along with Renew Missouri, Sierra Club, and the Council for the New Energy Economics (NEE) submitted comments identifying a number of alleged deficiencies and concerns regarding the IRPs.

Commission Rule 20 CSR 4240-22.080(9) requires parties who find deficiencies in or concerns with an IRP to work with the electric utility and the other parties to reach a joint agreement on a plan to remedy the identified deficiencies and concerns. On December 10, 2021, the Companies, NEE, Staff, Renew Missouri, and Sierra Club filed a *Joint Filing* that proposed a remedy to eighteen of the twenty-one alleged deficiencies

and concerns. The *Joint Filing* also identified the three alleged deficiencies and concerns that remain unresolved.

The *Joint Filing* requests the Commission order a scheduling conference. The Companies argue a scheduling conference should be ordered only if the Commission considers that a hearing is necessary. NEE and Sierra Club argue the Commission should order a scheduling conference regardless of whether the Commission determines a hearing is necessary.

Commission Rule 20 CSR 4240-22.080(10) provides:

> If full agreement on remedying deficiencies or concerns is not reached, then, within sixty (60) days from the date on which the staff, public counsel, or any intervenor submitted a report or comments relating to the electric utility's triennial compliance filing, the electric utility may file a response and the staff, public counsel, and any intervenor may file comments in response to each other. The commission will issue an order which indicates on what items, if any, a hearing will be held and which establishes a procedural schedule.

The *Joint Filing* was made on December 10, 2021, with separate, additional responses filed the same day by the Companies and NEE. No further responses have been received.

The Commission's rules outline the procedure for the IRP process. There are no requirements for a hearing on these filings. Consequently, this is a non-contested case, and the Commission may dispose of this matter informally at its discretion. Commission Rule 20 CSR 4240-22.080(16) requires that:

> The Commission will issue an order which contains its findings regarding at least one (1) of the following options:
>
> > (A) That the electric utility's filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter, and that the utility's resource acquisition strategy either does or does not meet the requirements stated in 20 CSR 4240-22.

> (B) That the Commission approves or disapproves the joint filing on the remedies to the plan deficiencies or concerns developed pursuant to section (9) of this rule;
>
> (C) That the Commission understands that full agreement on remedying deficiencies or concerns is not reached and pursuant to section (10) of this rule, the commission will issue an order which indicates on what items, if any, a hearing(s) will be held and which establishes a procedural schedule; and
>
> (D) That the Commission establishes a procedural schedule for filings and a hearing(s), if necessary, to remedy deficiencies or concerns as specified by the Commission.

The *Joint Filing* addressed most of the alleged concerns and deficiencies. Three alleged deficiencies and concerns were not resolved.

NEE alleged a deficiency due to Evergy's treatment of the Investment Tax Credit (ITC) for solar and battery storage paired with solar ("paired solar"). Evergy claimed that it cannot "monetize" the ITC for utility-owned solar and paired solar projects—that is Evergy has claimed that it cannot use the ITC to reduce the upfront capital cost of these resources. Instead, Evergy "normalizes" the ITC, *i.e.* spreads the tax benefits across the book life of the asset. This results in an increase in the cost of solar and paired solar by 20% or more. NEE argued this is a deficiency in that it prevents Evergy from minimizing costs, as required by 20 CSR 4240-22.010(2)(B).

Evergy responded that the ITC impacts the estimated capital cost for a resource and is factored into the Companies' analysis accordingly, but there is no requirement to model hypothetical tax credit structures which do not exist today.

The Commission agrees with Evergy and will not require any further response by the Companies to the concerns regarding treatment of the ITC for paired solar.

Sierra Club alleged a deficiency as to whether Purchase Power Agreements ("PPA") should be modeled as discrete resource options.

Evergy argued that the purpose of the IRP is to evaluate generic new resource options and not to determine ownership or financial structure. The Companies concluded that ownership of new resources is the appropriate "default" option to represent new resources that are being evaluated.

The Commission agrees with Evergy and will not require any further response by the Companies to the concern of whether PPA should be modeled as discrete resource options.

Sierra Club alleged a deficiency as Evergy failed to evaluate the public health impacts of its Alternative Resource Plans (ARPs). Specifically, Evergy should update its IRP scorecard to include a metric that assesses each ARP's contribution to reducing air pollution harms.

Evergy argued that public health impacts are assessed when environmental regulations are established. Each alternative resource plan considered by the Companies are based on resources that comply with environmental regulations. As such, no additional public health assessment is needed to evaluate alternative plans.

The Commission agrees with Evergy and will not require any further response by the Companies to the concern that Evergy failed to evaluate the public health impacts of its ARPs.

After reviewing Evergy's 2021 IRP filing and the December 10, 2021, *Joint Filing*, through which most of the concerns raised about the IRP filing have been resolved, as well as the three remaining unresolved alleged concerns and deficiencies, the

Commission finds that Evergy's 2021 IRP filing complies with the requirements of Commission Rule 20 CSR 4240-22, and that Evergy's resource acquisition strategy meets the requirements of that rule. The Commission will approve the *Joint Filing* and will require the Companies to comply with its requirements.

THE COMMISSION ORDERS THAT:

1. Pursuant to Commission Rule 20 CSR 4240-22.080(16)(A), the Commission finds that the 2021 triennial Integrated Resource Planning filing made by Evergy complies with the requirements of this chapter, and that the utility resource's acquisition strategy meets the standards stated in 20 CSR 4240-22.

2. Evergy shall comply with the resolutions described in the *Joint Filing* made on December 10, 2021.

3. This order shall become effective on April 8, 2022.

4. This file shall be closed on April 9, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro for Authority to Implement Rate Adjustments Required by 20 CSR 4240-20.090(8) and the Company's Approved Fuel and Purchased Power Cost Recovery Mechanism	)))))))	**File No. ER-2022-0025**

REPORT AND ORDER

RATES

§101. Fuel clauses

Under traditional cost-of-service ratemaking, rates are only changed in a general rate case. A Fuel Adjustment Clause permits adjustments of rates based upon fuel and purchased power costs between general rate cases. Fuel Adjustment Clauses reduce regulatory lag with respect to fuel costs, and thus reduces its impact on both the utility and customer. Utilities benefit in having a Fuel Adjustment Clause by being able to recover any increases in fuel and purchased power costs between rate cases. Likewise, customers benefit by receiving credits for fuel and purchased power costs that prove less than expected. Utilities are not required to have a Fuel Adjustment Clause.

§101. Fuel clauses

Fuel Adjustment Clauses are specific to the utility and their terms are contained within the utility's tariff. A utility's Fuel Adjustment Clause is approved in a general rate case and is subsequently modified or continued in future rate cases. Similar to the establishment or modification of an Fuel Adjustment Clause, the Commission has no authority to modify a utility's Fuel Adjustment Clause outside of a general rate case.

§101. Fuel clauses

Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), provides that extraordinary costs are not to be passed through the Fuel Adjustment Clause if those extraordinary costs are due to an insured loss, subject to a reduction due to litigation, or for any other reason. The first two reasons for excluding extraordinary costs are logical; costs for an insured loss will be recovered from the insurer and costs that could be reduced because of litigation are uncertain. The basis for the exclusion of extraordinary costs for any other reason is less clear, but the Commission is given the ability to allow for the exclusion of extraordinary costs from passing through the Fuel Adjustment Clause if there is a good reason to do so.

§101. Fuel clauses

There is no provision in Evergy Metro's Fuel Adjustment Clause rider that would allow it to defer off-system sales revenue from passing through its Fuel Adjustment Clause rate adjustment tariff. The Commission found that the plain language of its rule does not permit Evergy Metro to defer extraordinary revenues from its Fuel Adjustment Clause adjustment tariff.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro for Authority to Implement Rate Adjustments Required by 20 CSR 4240-20.090(8) and the Company's Approved Fuel and Purchased Power Cost Recovery Mechanism	)))))))	**File No. ER-2022-0025**

REPORT AND ORDER

Issue Date: March 16, 2022

Effective Date: March 26, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro for Authority to Implement Rate Adjustments Required by 20 CSR 4240-20.090(8) and the Company's Approved Fuel and Purchased Power Cost Recovery Mechanism	)))))))	**File No. ER-2022-0025**

PARTICIPATING PARTIES AND COUNSEL

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Midwest Energy Consumers' Group:

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Regulatory Law Judge: John T. Clark

REPORT AND ORDER

Procedural History

On July 30, 2021, Evergy Metro, Inc. d/b/a Evergy Missouri Metro (Evergy Metro) filed a tariff revision (Tariff No. JE-2022-0024) and accompanying testimony to implement rate adjustments pursuant to its fuel adjustment clause (FAC). The FAC tariff filing included fuel and purchased power costs for the 12th Accumulation Period. The 12th Accumulation Period includes the six months of January 1, 2021, through June 30, 2021. Evergy Metro's FAC tariff filing also included an adjustment excluding "extraordinary costs and revenues" resulting from the mid-February 2021 cold weather event known as Winter Storm Uri.

Evergy Metro incurred increased fuel and purchased power costs during the 12th Accumulation Period due to Winter Storm Uri, but these costs were offset by increased off-system sales revenues related to Winter Storm Uri. Most Missouri electrical utilities sustained large losses from Winter Storm Uri (Including Evergy Missouri West), but Evergy Metro's off-system sales resulted in positive revenue of approximately $32 million after applying Missouri's jurisdictional allocation. Evergy Metro's proposed FAC tariff sheet excluded this extraordinary revenue.

The Commission issued notice of Evergy Metro's FAC tariff filing and directed the Commission's Staff (Staff) to file a recommendation addressing it. Staff filed a recommendation on August 27, 2021, that the Commission reject the FAC tariff filing for failing to include revenues from Winter Storm Uri. The Commission directed Evergy Metro to respond to Staff's recommendation. Evergy Metro's response disagreed with Staff's

recommendation. On September 15, 2021, the Commission issued an order rejecting Evergy Metro's FAC tariff.

The Commission held a procedural conference on September 27, 2021, to determine how to proceed. Evergy Metro filed an FAC tariff revision (JE-2022-0066) containing amounts not in dispute, which was essentially the same as the rejected FAC tariff sheet, as the disputed amounts were the excluded extraordinary revenues. The Commission approved the interim FAC tariff sheet containing the undisputed amounts to take effect November 1, 2021.

The parties agreed to dispose of this case with a stipulation of facts and briefs due to the Commission's full hearing schedule and because this dispute involves the Commission's interpretation of the meaning of language within its own rule. The only issue for the Commission is whether Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), which allows for the exclusion of extraordinary costs, also allows extraordinary revenues to be excluded from passing through Evergy Metro's FAC.

The parties submitted a joint stipulation of facts containing the facts that Evergy Metro, Staff, the Office of the Public Counsel (OPC), and Midwest Energy Consumers' Group (MECG) agreed were relevant to the determination of this issue. Evergy, Staff, and MECG filed initial briefs on December 22, 2021, and reply briefs on January 12, 2022. On January 13, 2022, Staff filed a request for oral arguments. The Commission granted that request and oral arguments were held on February 18, 2022. The Commission takes official notice of Evergy Metro's Fuel Adjustment Clause Rider, Evergy Missouri West's File No. ER-2022-0005, and also Evergy Metro's rejected proposed FAC tariff filing (Tariff No. JE-2022-0024) and interim FAC tariff sheet (Tariff No. JE-2022-0066).

Findings of Fact

On December 15, 2021, the parties jointly filed a Stipulation of Facts setting forth the relevant facts the parties do not dispute. The Commission finds the undisputed facts in the stipulation to be conclusively established. Those undisputed facts are incorporated into the findings of fact below.

1. Evergy Metro is an electrical corporation and a regulated public utility that provides electricity for customers in Missouri and Kansas.[1]

2. Evergy Metro is subject to the jurisdiction of the Commission.[2]

3. Evergy Metro's tariff authorizes its FAC.[3]

4. Evergy Metro filed tariff sheets to adjust rates pursuant to its approved FAC on July 30, 2021, with an effective date of October 1, 2021.[4]

5. Evergy Metro's FAC tariff sheets sought to adjust rates to reflect costs and revenues from the six-month period of January 2021 through June 2021, also known as the 12th Accumulation Period.[5]

6. Evergy Metro's FAC tariff sheets did not include extraordinary credits/revenues from off-system sales revenues accrued from the February 2021 cold weather event known as Winter Storm Uri.[6]

7. Evergy Metro's only extraordinary fuel-related revenue for its 12th Accumulation period is from Winter Storm Uri.[7]

[1] Joint Stipulation of Facts, filed December 15, 2021.
[2] Joint Stipulation of Facts, filed December 15, 2021.
[3] PSC Mo. No. 7, Fourth Revised Sheet No. 50 through Sixth Revised Sheet no. 50.31.
[4] Joint Stipulation of Facts, filed December 15, 2021.
[5] Joint Stipulation of Facts, filed December 15, 2021.
[6] Joint Stipulation of Facts, filed December 15, 2021.
[7] Joint Stipulation of Facts, filed December 15, 2021.

8. After applying the Missouri-Kansas jurisdictional allocation percentage, the net benefit to Evergy Metro's customers due to Winter Storm Uri is approximately $32 million.[8]

9. The Commission rejected Evergy Metro's proposed FAC tariff sheets filed July 30, 2021.[9]

10. The Commission approved Evergy Missouri West's FAC rate adjustment tariff authorizing the exclusion of extraordinary costs.[10]

11. The parties (Evergy Metro, Staff, OPC, and MECG) agree that the disputed amount is the difference between Evergy Metro's three-year average of its actual FAC includable fuel costs for 2018-2020, and what Evergy Metro booked for its fuel and purchased power costs for February 2021.[11]

12. Evergy Metro filed an interim FAC tariff sheet on September 30, 2021, that contained the amounts not in dispute in this proceeding. That tariff sheet became effective on November 1, 2021.[12]

Conclusions of Law

A. Evergy Metro is a Missouri corporation, an "electrical corporation," and a "public utility" as defined by Section 386.020, RSMo and is authorized to provide water and sewer service to portions of Missouri.

B. Section 536.070(6), RSMo provides that Agencies shall take official notice of all matters of which the courts take judicial notice.

[8] Joint Stipulation of Facts, filed December 15, 2021.
[9] Joint Stipulation of Facts, filed December 15, 2021.
[10] File No. ER-2022-0005, Order Approving Fuel Adjustment True-Up and Approving Tariff to Change Fuel Adjustment Rates, issued August 18, 2021.
[11] Joint Stipulation of Facts, filed December 15, 2021.
[12] Joint Stipulation of Facts, filed December 15, 2021, and Tariff No. JE-2022-0066.

C. The Commission has the authority to promulgate rules pursuant Section 386.250(6), RSMo.

D. The power of the Commission to make rules includes the power to determine any reasonable interpretation and application of such rules.[13]

E. Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), provides that extraordinary costs are not to be passed through the FAC if such costs are an insured loss, or are subject to reduction due to litigation or for any other reason.

F. Commission Rule 20 CSR 4240-20.090(1)(B) provides that actual net energy costs (ANEC) are prudently incurred fuel and purchased power costs net of fuel-related revenues of a RAM during the accumulation period.

G. Section 386.266 RSMo, authorizes the Commission to allow a Rate Adjustment Mechanism (RAM) permitting periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs for fuel and purchased power. It also authorizes the Commission to approve incentives, such as the 95 percent/five percent sharing mechanism, to improve the efficiency and cost-effectiveness of fuel and purchased-power procurement.

H. Evergy Metro's FAC Rider, authorizes its FAC and the 95 percent/5 percent sharing mechanism, by which Evergy passes 95 percent of all prudent fuel and purchased power costs and savings to customers.[14]

I. Section 386.266.6 RSMo, provides once a RAM is approved by the Commission under this section, it shall remain in effect until such time as the

[13] *Deaconess Manor Association v. Public Service Commission*, 994 S.W.2d 602, 609 (Mo. App. W.D. 1999).
[14] PSC Mo. No. 7, Fourth Revised Sheet No. 50 through Sixth Revised Sheet no. 50.31.

Commission authorizes the modification, extension, or discontinuance of the mechanism in a general rate case or complaint proceeding.

J. Section 386.266.9, RSMo provides that, once established, an incentive plan is binding on the Commission for the term of the plan.

Decision

Does Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), allow extraordinary revenues to be excluded from passing through Evergy Metro's FAC?

This case is one of several involving Evergy Metro's off-system sales revenues from Winter Storm Uri. In File No. EU-2021-0283 Evergy Metro and Evergy Missouri West are requesting an accounting authority order to defer extraordinary costs from Evergy Missouri West's FAC and extraordinary revenues from Evergy Metro for consideration in a future rate case. File No. ER-2022-0206 is Evergy Metro's FAC filing for the 13th Accumulation Period, which also does not include the 12th Accumulation Period extraordinary revenues and has yet to be addressed by the Commission.

Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), provides that extraordinary costs are not to be passed through the FAC if those extraordinary costs are due to an insured loss, subject to a reduction due to litigation, or for any other reason. The first two reasons for excluding extraordinary costs are logical; costs for an insured lost will be recovered from the insurer and costs that could be reduced because of litigation are uncertain. The basis for the exclusion of extraordinary costs for any other reason is less clear, but the Commission is given the ability to allow for the exclusion of extraordinary costs from passing through the FAC if there is a good reason to do so.

Under traditional cost-of-service ratemaking, rates are only changed in a general rate case. An FAC permits adjustments of rates based upon fuel and purchased power

costs between general rate cases. FACs reduce regulatory lag with respect to fuel costs, and thus reduces its impact on both the utility and customer. Utilities benefit in having an FAC by being able to recover any increases in fuel and purchased power costs between rate cases. Likewise, customers benefit by receiving credits for fuel and purchased power costs that prove less than expected. Utilities are not required to have an FAC. FACs are specific to the utility and their terms are contained within the utility's tariff. A utility's FAC is approved in a general rate case and is subsequently modified or continued in future rate cases. Similar to the establishment or modification of an FAC, the Commission has no authority to modify a utility's FAC outside of a general rate case.

Evergy Metro has an incentive, or performance based, Commission approved sharing mechanism as part of its FAC. Under that sharing mechanism Evergy Metro recovers 95 percent of any fuel and purchased power costs through its FAC and returns 95 percent of any revenues from fuel and purchased power costs for a given Accumulation Period. Section 386.266.9 RSMo, states that if the Commission approves an incentive plan it is binding on the Commission for the entire term of the incentive plan.

Evergy Metro argues that Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), which allows for the exclusion of extraordinary costs, is inclusive of revenues. Evergy Metro argues that because the FAC addresses both fuel and purchased power costs and revenues, this particular rule provision does as well. Evergy Metro cites numerous provisions of the Commission's FAC rule that mention both costs and revenues. Evergy Metro also argues that it is fundamentally unfair that the Commission's rule would apply to extraordinary costs and not revenues. Evergy Metro notes that the Commission

allowed exclusion of both extraordinary costs and net revenues for Evergy Missouri West's FAC rate adjustment tariff filing.

Staff argues that if the Commission had meant to include extraordinary revenues in this rule it would have explicitly done so. Staff argues that, when netted, a positive outcome is a revenue, and a negative outcome is a cost. Staff's proposition is logical. If the Commission is allowing the exclusion of Winter Storm Uri costs for Evergy Missouri West, it is appropriately netting those costs against revenues from that same event. Addressing costs and revenues for particular categories as separate results in illogical outcomes.

Staff states: "Evergy Missouri Metro, a large regulated utility, is appropriately positioned to mitigate the impact of extraordinary costs to customers through a deferral, but any concurrent action to defer revenues will result in an adverse financial impact on customers as a whole."[15] Staff's statement explains why the Commission's rule explicitly lists extraordinary costs and not extraordinary revenues; a large regulated utility is less likely to be impacted by costs that result from an event like Winter Storm Uri. Evergy Missouri West was allowed to exclude those extraordinary costs from its FAC rate adjustment tariff so that they could be addressed outside of the FAC and therefore not immediately create a hardship for Evergy Missouri West's customers. Evergy Missouri West's off-system sales revenue was less than its fuel and purchased power costs from Winter Storm Uri. Evergy Metro's off-system sales revenue exceed its costs for Winter Storm Uri. There is no hardship for Evergy Metro's customers to bear and there is no

[15] Staff's Reply Brief, p. 5.

good reason to exclude 95 percent of Evergy Metro's off-systems sales revenue from being returned to customers.

There is no provision in Evergy Metro's FAC rider that would allow it to defer off-system sales revenue from passing through its FAC rate adjustment tariff. The Commission finds that the plain language of its rule does not permit Evergy Metro to defer extraordinary revenues from its FAC adjustment tariff. Evergy Metro will be ordered to file an FAC adjustment tariff inclusive of off-system sales revenues from Winter Storm Uri, with any applicable interest. So not to further delay any FAC adjustment tariff sheet inclusive of Winter Storm Uri off-system sales revenue, the Commission finds it reasonable to make this order effective in less than thirty days.

THE COMMISSION ORDERS THAT:

1. Extraordinary revenues from Winter Storm Uri May not be excluded from an FAC pursuant to Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI).

2. Evergy Metro shall file an FAC adjustment tariff that complies with this order no later than March 31, 2022.

3. This Report and Order shall become effective on March 26, 2022.

BY THE COMMISSION

Morris L Woodruff

Morris Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Louis DeFeo,	)	
	)	
Complainant	)	
	)	**File No. WC-2021-0075**
v.	)	
	)	
Missouri-American Water Company,	)	
	)	
Respondent	)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§6. Weight, effect and sufficiency

Evidence of a contemporaneous test of showing that the meter was more accurate than required by law outweighs evidence showing the lack of a flood or the disposal of large amounts of water, and rebuts complainant's claims that the water in question was not delivered to his property through the meter.

§6. Weight, effect and sufficiency

If the accuracy of a meter has been verified by a test, facts challenging the water use record's accuracy are given less weight than if the meter has not been tested.

§6. Weight, effect and sufficiency
§27. Finality and conclusiveness

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

§22. Parties

The Staff of the Public Service Commission has no legal existence apart from the Commission itself and is not a proper respondent.

WATER

§3. Obligation of the utility

A tariff has the same force and effect as a statute, and it becomes law.

§8. Jurisdiction and powers of the State Commission

The Commission has jurisdiction over complaints filed against a regulated utility setting forth violations of any law, rule or order of the Commission.

§31. Billing practices

Respondent providing information showing the exact period during which an alleged overcharge occurred satisfies its obligation to determine the probable period during which conditions existed that may cause billing errors under Commission Rule 20 CSR 4240-13.025(1).

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Louis DeFeo,	)	
	)	
Complainant	)	
	)	**File No. WC-2021-0075**
v.	)	
	)	
Missouri-American Water Company,	)	
	)	
Respondent	)	

REPORT AND ORDER

Issue Date: March 16, 2022

Effective Date: April 15, 2022

APPEARANCES

Appearing For Louis DeFeo:

Louis DeFeo, Attorney at Law, 1700 Green Berry Road, Jefferson City, MO 65101

Appearing for Missouri American Water Company:

Dean L. Cooper, Brydon, Swearengen & England, PC, 312 East Capitol, Jefferson City MO 65102

Appearing for the Staff of the Missouri Public Service Commission:

Kevin Thompson, Chief Staff Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: Ross Keeling

REPORT AND ORDER

Procedural History

On September 18, 2020, Louis DeFeo filed a complaint with the Commission against Missouri-American Water Company (MAWC or Company), alleging that MAWC billed him for over 40,000 gallons of water that he did not receive. He also alleges that MAWC (1) failed to render a utility bill computed on the actual usage during the billing period, in violation of Commission Rule 20 CSR 4240-13.020(2); (2) failed to consider all related and available information including physical evidence offered by Mr. DeFeo and the analysis of a professional hydrologist, in violation of 20 CSR 4240-13.025(1); and (3) failed to inform him of his right to make an informal complaint to the Commission, and of the address and phone number where he could file an informal complaint with the Commission, in violation of 20 CSR 4240-13.045(9) and 20 CSR 4240-13.070(3). Mr. DeFeo also alleges that representatives of the Commission failed to inform him of his right to make a formal complaint in violation of 20 CSR 4240-2.070.

Mr. DeFeo requests that MAWC remove any charge based on the alleged receipt of over 40,000 gallons of water, and specified in his complaint that the amount in dispute was about $250. Mr. DeFeo's complaint is being addressed under the small formal complaint procedures contained in Commission Rule 20 CSR 4240-2.070(15) because the amount in dispute was less than $3,000.

The Commission issued notice of the complaint, directed MAWC to file an answer, and directed the Commission's Staff (Staff) to file a report on the complaint. MAWC filed an answer to Mr. DeFeo's complaint on October 16, 2020. The answer included a request

for mediation. Mr. DeFeo also filed a request for mediation on December 9, 2020, but requested that the mediation not be scheduled until after Staff's reports were available.

On December 9, 2020, Staff filed its recommendation and memorandum detailing its investigation and analysis (Report). In its Report, Staff concluded that MAWC had not violated any applicable statutes, Commission rules, or Commission-approved company tariffs related to the complaint. On December 16, 2020, the Commission issued its order granting the request for mediation and appointing a mediator. Mediation rendered no resolution to the matter.

On July 13, 2021, MAWC filed a notice of satisfaction, stating that the amount at issue had been credited to Mr. DeFeo's account, satisfying the complaint pursuant to Commission Rule 20 CSR 4240-2.070(8). On November 3, 2021, Staff filed a Motion to Dismiss based on MAWC's notice of satisfaction. The Commission took this motion with the case and scheduled an evidentiary hearing for November 19, 2021.

The parties presented a total of four issues to be determined by the Commission. Staff filed a list of issues on behalf of itself and MAWC. Mr. DeFeo elected to file separately, and presented the following issues:

> 1. Did the Company through its employee fail to correctly bill the Customer by refusing to consider actual evidence of water usage offered by the Customer but rather relied solely on the bias that meters are always accurate?
>
> 2. Did the Company through its employee fail to respect Customer's right to appeal by failing to inform the Customer of his right to file an informal complaint with the PSC which is required?
>
> 3. Did the PSC representative handling the informal complaint error by refusing to consider actual evidence of water usage offered by the Customer but rather relied solely on the bias that meters are always accurate? Did the PSC

> representative handling the informal complaint error by failing to inform the Customer of his right to file a formal complaint? (Complainant realizes that the Respondent is not responsible for the actions of the PSC staff but believes that it is in the public interest to call the need for staff education to the attention of the Commission).

Staff and MAWC presented the following additional issue:

> 4. Did MAWC's Notice of Satisfaction filed on July 13, 2021, and the actions described therein, satisfy the Complaint?

At the evidentiary hearing, the Commission heard the testimony of three witnesses and received eight exhibits onto the record. Tracie Figueroa, Business Service Specialist, testified for MAWC; and David Spratt, PSC Utility Operations Technical Specialist, testified for Staff. Mr. DeFeo testified on his own behalf, and offered the pre-filed testimony of David Spratt as well.

Mr. DeFeo, Staff, and MAWC filed post-hearing briefs. On January 24, 2022, the case was deemed submitted for the Commission's determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "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."

On February 28, 2022, the Commission issued its *Notice of Recommended Report and Order*, allowing the parties ten days to file comments supporting or opposing the recommended report and order pursuant to Commission Rule 20 CSR 4240-2.070(15)(H). Neither MAWC nor Mr. DeFeo filed a response pursuant to that notice. On March 10, 2022, the Office of the Public Counsel (OPC) filed its *Public Counsel's Response to Recommended Report and Order*, requesting that the Commission not issue a final order in this case until after the completion of a thorough

investigation into the matter of high water usage readings experienced by MAWC's customers over the past several years.

Customer specific information is confidential under Commission Rule 20 CSR 4240-2.135(2); however, the Commission may waive this provision under Commission Rule 20 CSR 4240-2.135(19) for good cause. Good cause exists to waive confidentiality as to Mr. DeFeo's bills and water usage because the Commission would be unable to write findings of fact or a decision that did not use some of Mr. DeFeo's customer specific information. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the Commission's decision.

Findings of Fact

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, rather that the omitted material was not dispositive of this decision. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.[1]

[1] An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State, 293 S.W.3d 63, 80 (Mo. App. S.D. 2009). With respect to the appellate standard for reviewing Commission decisions, this case stated, further:

1. MAWC is a public utility that renders water services to customers in Missouri.[2]

2. MAWC provided and continues to provide water service to the Complainant Louis DeFeo (Mr. DeFeo) at the address at issue in this case, 1700 Green Berry Road, Jefferson City, Missouri.[3]

Billing

3. Mr. DeFeo received a bill dated April 3, 2020, covering the service period of March 4, 2020 to April 2, 2020, for $129.76, an amount which was twice the amount of recent monthly bills. The usage for the period was 19,100 gallons.[4] Mr. DeFeo's immediately prior bill, for example, was $58.49, with a usage of 7,900 gallons.[5]

4. On April 21, 2020, Mr. DeFeo called the Company for advice on how to identify the source of the higher use. Mr. DeFeo was advised to check toilets for leaks. No leaks were found. Mr. DeFeo paid the bill.[6]

5. The following month, Mr. DeFeo received a bill dated May 8, 2020, covering the service period of April 3 to May 4, 2020. The amount was $232.62, an amount almost four times the March bill. The usage on the May bill was 35,400 gallons.[7]

> "[I]f substantial evidence supports either of two conflicting factual conclusions, '[we are] bound by the findings of the administrative tribunal.' [citation omitted] The determination of witness credibility is a subject best left to the Commission, 'which is free to believe none, part, or all of [a witness's] testimony.' [citations omitted] We will not re-weigh the evidence presented to the Commission. [citation omitted]."

[2] Exhibit 101, P.S.C. Mo No. 13, 1st Revised Sheet No. R32.
[3] Ex. 2, DeFeo Direct Testimony, pp. 1-37; Ex. 200, p. 5
[4] Ex. 8, DeFeo Direct Testimony, pp. 1-2; Transcript, p. 27:1-4.
[5] Ex. 8, DeFeo Direct Testimony, p. 2.
[6] Ex. 8, DeFeo Direct Testimony, p. 2.
[7] Ex. 8, DeFeo Direct Testimony, p. 2; Tr. vol. 2, p. 27:15-21.

Meter Testing

6. On May 20, 2020, field service representative Cook from MAWC conducted an investigation of Mr. DeFeo's residence.[8]

7. A bench test of Mr. DeFeo's meter on May 22, 2020, showed it to be greater than 99% accurate.[9]

8. The data log for Mr. DeFeo's meter which showed his historical hourly usage indicated continuous water usage between 13:52 on April 1 and 15:52 on April 4, 2020.[10]

9. This usage spike affected Mr. DeFeo's April and May 2020 bills.[11]

10. The meter reading at the time Mr. Cook tested Mr. DeFeo's water meter on May 22, 2020, was 144750.84.[12]

Water Features

11. Mr. DeFeo does not have an automatic water use system.[13]

12. Mr. DeFeo has no irrigation system, no water adding system, no system that automatically turns water on, except humidifiers on furnaces and an ice maker on a refrigerator.[14]

13. Mr. DeFeo has an indoor pool at his residence which is 36 feet by 18 feet, has an average depth of 4.1 feet, and has a capacity of 20,000 gallons.[15]

[8] Ex. 200, Figueroa Rebuttal Testimony, p. 7; Ex. 8, DeFeo Direct Testimony, p. 2.
[9] Ex. 200, Figueroa Rebuttal Testimony, p. 7; Schedule TF-3.
[10] Ex. 200, Figueroa Rebuttal Testimony, p. 8; Schedule TF-4.
[11] Ex. 8, DeFeo Direct Testimony, p. 2:7-8.
[12] Ex 200, Figueroa Rebuttal Testimony, Schedule TF-3.
[13] Ex. 8, DeFeo Direct Testimony, p. 2.
[14] Ex. 8, DeFeo Direct Testimony, p. 3.
[15] Ex. 8, DeFeo Direct Testimony, p. 3

14. The pool has no bottom drain. The only way to empty the pool is to pump the water out. The pool has never been emptied since it was constructed in 2000. The pool will lose some water by evaporation and through small leaks in the vinyl liner. About once every five days, the pool is topped off by adding one-inch of water with a garden hose.[16]

15. There is a drain for the deck of the pool so when people splash water up on the deck it has somewhere to go. That drain is very slow.[17]

MAWC's Follow-Up

16. Mr. Cook visited Mr. DeFeo's residence three times, which were interviews and not inspections. Mr. DeFeo does not recall Mr. Cook inspecting either the house or pool house at Mr. DeFeo's premises. The only inspection mentioned in Mr. Cook's report to the Company was of the meter.[18]

17. On June 9, 2020, Mr. Cook informed Mr. DeFeo that the meter was tested in place and was found to be accurate.[19]

18. On June 9, 2020, Mr. Cook provided an electronic copy of the Data Log covering the water service in bi-hourly units from March 5, 2020, to June 9, 2020. The Data Log showed that the metered usage was not a steady leak over a 30-day period, but a sudden spike that lasted 73 hours, over a four-day period. The spike started on Wednesday, April 1, 2020, and ended on Saturday, April 4, 2020.[20]

[16] Ex. 8, DeFeo Direct Testimony, p. 3; Transcript, pp. 29:20 – 30:8
[17] Transcript, pp. 50:15 – 51:5
[18] Ex. 8, DeFeo Direct Testimony, p. 2.
[19] Ex. 8, DeFeo Direct Testimony, p. 2.
[20] Ex. 8, DeFeo Direct Testimony, p. 2; Ex. 3, Line Graph of Data Log Reading.

19. Mr. Cook returned to Mr. DeFeo's residence on June 10, 2020, and stated that he could not explain where the 43,000 gallons went. He suggested that Mr. DeFeo contact his supervisor with any further questions or concerns.[21]

20. Mr. DeFeo called Mr. Cook's supervisor, Nate Hart. Mr. Hart advised Mr. DeFeo that the meter reading was accurate. Mr. Hart did not inform Mr. DeFeo of his right to make an informal complaint to the Commission.[22]

DeFeo Complaints

21. Mr. DeFeo worked from home due to the COVID-19 pandemic beginning March 1, 2020, and was therefore at home during the days of the spike and noticed no large water flow.[23]

22. Mr. DeFeo consulted with Robert E. Criss, a hydrologist at Washington University, St Louis. Mr. Criss studied the Data Log provided by the Company and analyzed the situation. His affidavit is in evidence.[24]

23. Mr. DeFeo initiated an informal complaint with the Commission on July 13, 2020, stating that he had been billed erroneously for usage by MAWC between the dates of April 1 and April 4, 2020, for approximately 40,000 gallons of water,[25] resulting in an overbilling of roughly $250.

24. Sometime before September 18, 2020, MAWC offered Mr. DeFeo a leak adjustment and/or a payment arrangement to resolve his informal complaint. Mr. DeFeo

[21] Ex. 8, DeFeo Direct Testimony, pp. 2-3; Transcript, p. 29:11-14
[22] Ex. 8, DeFeo Direct Testimony, p. 3.
[23] Ex. 8, DeFeo Direct Testimony, p. 2.
[24] Ex. 1. Criss Affidavit; Ex. 8, DeFeo Direct Testimony, p. 3.
[25] Both 40,000 and 43,000 gallons are used as an estimate by the parties here. The difference is not material to this case.

declined MAWC's offer and, on September 18, 2020, filed his formal complaint with the Commission.[26]

25. On July 13, 2021, MAWC credited the $250 at issue to Mr. DeFeo's account and filed its Notice of Satisfaction in the above-captioned case.[27]

26. At the hearing, Mr. DeFeo acknowledged receipt of the $250 credit to his account, although he stated that he "did not accept it."[28]

Staff's Inspection

27. Staff witness David Spratt conducted an inspection of Mr. DeFeo's residence on September 29, 2020.[29]

28. Although Mr. Spratt was unable to observe any evidence of water damage in or around the property that would indicate leaks or an over-filled pool, on cross-examination he proffered several scenarios that might explain such usage, such as reversal of the pool filter system while the pool was filling, which would drain the water to the sewer, pilfering of the water via an outdoor faucet, and a leaking toilet.[30]

Notice of Appeal Rights

29. It is MAWC's standard procedure that once an interaction with a customer has reached a point where it is clear that the dispute cannot be resolved between the parties, and MAWC's customer services have exhausted all options in reaching a resolution, a letter from MAWC is sent to the customer notifying them of the opportunity to present a complaint to the Commission pursuant to 20 CSR 4240-13.045(9) and

[26] Ex. 100, Staff Report, Appx. A, pp. 1-2.
[27] Notice of Satisfaction.
[28] Transcript, p. 38:5-8.
[29] Ex. 100, Staff Report, Appx. A, p. 4.
[30] Transcript, pp. 59-61.

20 CSR 4240-13.070(3).[31]

30. It is MAWC's standard procedure that before such a letter is sent, the complainant customer is directed to the Account Resolution Team at MAWC, which is comprised of the highest-level billing representatives within the customer service organization at MAWC.[32]

31. Under MAWC's standard procedure, it is only after the Account Resolution Team is unable to resolve the issue that the resolution process would be considered exhausted, and the dispute considered unresolved, that a letter would issue from MAWC to the complainant customer directing them to the Commission's complaint process.[33]

32. MAWC sent a letter dated May 22, 2020 to Mr. DeFeo stating that if he had any questions regarding MAWC's initial service order finding the meter reading to be accurate, he should contact a customer service representative.[34]

33. Had Mr. DeFeo responded to the letter and contacted customer service, he would have been directed to the Account Resolution Team.[35]

34. Were the situation not resolved by the Account Resolution Team, a letter would have issued directing Mr. DeFeo to the Commission's complaint process.[36]

35. Instructions regarding customer's rights to bring unresolved issues with MAWC before the Commission are always available on MAWC website, and were so at all times relevant herein.[37]

36. Mr. DeFeo received a letter from MAWC dated May 22, 2022, referring

[31] Ex. 200, Figueroa Rebuttal Testimony, p.10.
[32] Ex. 200, Figueroa Rebuttal Testimony, p. 11.
[33] Ex. 200, Figueroa Rebuttal Testimony, p. 11.
[34] Ex. 200, Figueroa Rebuttal Testimony, p. 10; Schedule TF-8.
[35] Ex. 200, Figueroa Rebuttal Testimony, pp. 10-11.
[36] Ex. 200, Figueroa Rebuttal Testimony, pp. 10-11.
[37] Ex. 200, Figueroa Rebuttal Testimony, p. 9.

him to MAWC's customer service organization, to which he failed to respond. Responding to the letter would have escalated his complaint to the Account Resolution Team. He had previously learned the procedure to file an informal complaint with the Commission from a letter issued by MAWC regarding a dispute in 2019.[38]

Conclusions of Law

A. MAWC is a Missouri corporation and a "water corporation" and "public utility" as defined by Section 386.020, RSMo, (Supp. 2020), and is authorized to provide water and sewer service to portions of Missouri. The Commission has jurisdiction over MAWC's services, activities and rates pursuant to Section 386.250 and Chapter 393, RSMo.

B. Section 386.390.1, RSMo, states that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

C. Section 386.390.3, RSMo states that the Commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

D. Commission Rule 20 CSR 4240-13.020(2), requires that each billing statement rendered by a utility shall be computed on the actual usage during the billing period.

E. Commission Rule 20 CSR 4240-13.025(1) provides that for all billing errors, the utility will determine from all related and available information the probable period

[38] Transcript, pp.51-52.

during which the condition causing the errors existed and shall make billing adjustments for that period.

F. Commission Rule 20 CSR 4240-10.030(37) requires water meters to be accurate to within 5% when registering water stream flow.

G. Commission Rule 20 CSR 4240-13.040(1) requires utilities to adopt procedures which shall ensure the prompt receipt, thorough investigation and, where possible, mutually acceptable resolution, of customer inquiries.

H. Commission Rule 20 CSR 4240-13.045(9) requires that, in the event of a dispute, a utility must notify the customer that each party has a right to make an informal complaint to the Commission, and of the address and telephone number where the customer may file an informal complaint with the Commission if the utility does not resolve the dispute to the satisfaction of the customer.

I. Commission Rule 20 CSR 4240-13.070(3) provides that if a utility and a customer and/or applicant fail to resolve a matter in dispute, the utility shall advise the customer and/or applicant of his/her right to file an informal complaint with the Commission under 4 CSR 240-2.070 (now 20 CSR 4240-2.070).

J. Commission Rule 20 CSR 4240-13.070(4) provides that if the staff is unable to resolve the informal complaint to the satisfaction of the parties, the staff shall call the complainant and utility and note such conversation into the Commission's electronic filing and information system and send a dated letter or email to that effect to the complainant and to the utility. Staff shall also advise the customer of his/her right to file a formal complaint with the Commission under 4 CSR 240-2.070 (now 20 CSR 4240-2.070).

K. MAWC's tariff, P.S.C. Mo No. 13, 1st Revised Sheet No. R. 32, provides that the Company's installed meter shall be the standard for measuring and/or billing water service.

L. A tariff has the same force and effect as a statute, and it becomes law. [39]

M. Mr. DeFeo as the complainant bears the burden of proof to show by a preponderance of evidence that MAWC has violated a law subject to the Commission's authority, a Commission rule, or an order of the Commission.[40]

N. The determination of witness credibility is left to the Commission, "which is free to believe none, part or all of the testimony."[41]

O. Section 386.390.1, RSMo., authorizes complaints against "any corporation, person or public utility." The Commission Staff is not any of those things. The Staff of the Public Service Commission has no legal existence apart from the Commission itself and is not a proper respondent.

Decision

Issue 1 – Did the Company through its employee fail to correctly bill the Customer by refusing to consider actual evidence of water usage offered by the Customer but rather relied solely on the bias that meters are always accurate?

Mr. DeFeo contends that MAWC failed to correctly bill his account because it failed to compute actual usage of water in violation of Commission Rule 20 CSR 4240-13.020(2). Mr. DeFeo argues that there is no evidence that the water was deposited

[39] *State ex rel Missouri Gas Energy v. Public Service Com'n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006).
[40] *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003). Stating that in cases "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with the complainant."
[41] In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service and Midwest Energy Consumers' Group v. Missouri Public Service Commission, 509 S.W.3d 757, 763 (Mo. App. W.D. 2016)

on his property because there are no physical signs that it was present, and that it would be impossible to hide 40,000 gallons of water.

The Commission-approved tariff (Tariff) determines the means by which water is measured for billing purposes and has the same force and effect as a statute. Commission Rule 20 CSR 4240-13.020(2) requires billing to be based on actual usage and the Tariff requires that the installed meter is the standard for measuring and billing water service. Hence, the actual usage referenced in the Commission Rule is the amount indicated by the installed meter, unless other factors indicate MAWC's water use record is inaccurate.

Facts challenging the accuracy of the utility's water use records are weighed against the empirical information provided by testing the meter for accuracy. If the accuracy of the meter cannot be verified by a test, facts challenging the water use record's accuracy are given more weight than if the meter has been tested. In this case the meter was tested by MAWC contemporaneously with this dispute and found to be greater than 99% accurate. This is more accurate than required under Commission Rule 20 CSR 4240-10.030(37).

Mr. DeFeo failed to rebut evidence showing that his water meter was accurate. The facts he presents do not address the accuracy of the meter or the quality of the test, but attempt to show that the water simply did not appear on his property. Mr. DeFeo testified that there was no evidence that the water had been deposited on his property. However, as testified to by Mr. Spratt, there are multiple outlets by which water could be diverted to the city sewers from Mr. DeFeo's property. Mr. DeFeo's failure to account for the water that passed through the meter to his property does not prove he did not receive

it. The lack of physical evidence of a flood or a leak on his property is outweighed by the physical evidence provided by an accurate water meter and testimony on the other outlets by which water could be diverted to the sewers. Accordingly, Mr. DeFeo has not met his burden to show that MAWC failed to bill him for water service based on actual usage or that MAWC violated Commission Rule 20 CSR 4240-13.020(2).

Mr. DeFeo argues that *Beecham v. Missouri-American Water Company*, File No. WC-2020-0181,[42] controls in this case because here, like in *Beecham*, the customer is offering evidence that water was not delivered when the utility's records indicate otherwise. In *Beecham*, the customer's water use showed an upward trend over a term of years, and her meter had not been manually read for nearly a year at the time of the dispute. MAWC had relied on AMI remote transmission technology for meter readings during that period. In *Beecham*, the customer presented evidence that she did not use the amount of water that she was billed for, and MAWC failed to enter evidence of a test verifying the accuracy of its meter and of its water use record. As a result, evidence of Beecham's average usage, and a gradual drop in the metered usage after the installation of a new meter, became relevant. *Beecham* is distinguishable from the present case because no meter test results were offered or admitted as evidence in that case. In the current case the evidence of a contemporaneous meter test showing that the meter is greater than 99% accurate rebuts Mr. DeFeo's claims that the water was not delivered to his property through the meter.

The Commission does not find the affidavit of Mr. Robert Criss persuasive. Mr. Criss contends that it is not possible that 40,000 gallons of water could flow onto

[42] Beecham v. Missouri-American Water Company, Report and Order, January 13, 2021.

Mr. DeFeo's property without evidence of "where that huge amount of water went." However, as testified to by Mr. Spratt, there are multiple outlets by which water can be diverted to the city sewers wherein it would not flow "onto" Mr. DeFeo's property. Further, in his affidavit, Mr. Criss does not indicate that he tested or inspected MAWC's data recording, transmission, and processing systems, and fails to articulate a reason to believe MAWC's remote gauging transmission system, or its meter, were defective or inaccurate. His opinion is therefore not instructive on this point.

Mr. DeFeo also contends that MAWC violated Commission Rule 20 CSR 4240-13.025(1) by failing to consider all related and available information, including physical evidence and the analysis of a professional hydrologist. That rule requires MAWC to determine the probable period during which conditions existed that caused billing errors. No billing errors were determined to have occurred at the time of the filing of the complaint in this case, but MAWC has provided information that identifies the exact period during which the alleged overcharge occurred. Therefore, Mr. DeFeo has not shown a violation of Commission Rule 20 CSR 4240-13.025(1).

Mr. DeFeo cites Commission Rule 20 CSR 4240-13.040(1) in his Complaint, which requires MAWC to adopt procedures which shall ensure the prompt receipt, through investigation and, where possible, mutually acceptable resolution of customer inquiries. Mr. DeFeo fails to explain how or offer any credible evidence to support a finding that MAWC may have violated that rule at any point, so the Commission will consider that issue abandoned, and will not address it.

Issue 2 – Did the Company through its employee fail to respect Customer's right to appeal by failing to inform the Customer of his right to file an informal complaint with the PSC which is required?

Mr. DeFeo argues that MAWC failed to provide notice of his right to make an informal complaint, as required by Commission Rule 20 CSR 4240- 13.045(9). That rule requires the utility to give the customer notice of his or her right to file an informal complaint with the Commission if it does not resolve the dispute to the satisfaction of the customer.

Tracie Figueroa, MAWC's Business Service Specialist for Customer Experience, testified that MAWC's established procedure is to refer customers to its customer service organization, where it is then referred to the Account Resolution Team. The evidence also shows that if the Account Resolution Team cannot resolve the matter, a letter informing the customer of his right to an informal complaint with the Commission is sent to the customer.

By the letter, dated May 22, 2020, Mr. DeFeo was directed to contact a MAWC customer service representative if his complaint was not resolved to his satisfaction. However, Mr. DeFeo did not respond to the May 22, 2020 letter and did not contact MAWC customer service before filing his informal complaint with the Commission. Mr. DeFeo admits that he had previously received a letter from MAWC informing him of his right to file a complaint with the Commission in 2019 in a previous matter. Mr. DeFeo stated that he contacted the Commission to file an informal complaint in the current case based on knowledge gained from that 2019 letter.

It is apparent that a process for giving the required notice exists, and that MAWC followed that process in this case. Mr. DeFeo simply did not follow that process to its end, so he was not issued the notice. It is unreasonable to expect MAWC to anticipate when

a customer may depart from the conflict resolution process before he has been referred to MAWC's customer service department. Mr. DeFeo has not shown that MAWC has violated Commission Rule 20 CSR 4240-13.045(9).

Issue 3 – Did the PSC representative handling the informal complaint err by refusing to consider actual evidence of water usage offered by the Customer but rather relied solely on the bias that meters are always accurate? Did the PSC representative handling the informal complaint err by failing to inform the Customer of his right to file a formal complaint?

Mr. DeFeo also claims that Staff violated Commission Rule 20 CSR 4240-13.070(4) and (4)(B), by failing to advise him of his right to file an informal complaint and a formal complaint with the Commission. Staff has no legal existence apart from the Commission itself and is not a proper respondent in this matter. Section 386.390.1, RSMo., authorizes complaints against "any corporation, person or public utility." The Commission Staff is not any of those things and Mr. DeFeo's complaint against the Staff is therefore not authorized and cannot be entertained.

Issue 4 – Did MAWC's Notice of Satisfaction filed on July 13, 2021, and the actions described therein, satisfy the Complaint?

MAWC filed a notice of satisfaction on July 13, 2021, explaining that it credited Mr. DeFeo $250 to satisfy the issues in this matter. On November 3, 2021, Staff took up the matter in Staff's Motion to Dismiss, arguing, among other things, that the payment rendered the matter moot because if judgment was rendered it would not have any practical effect upon any existing controversy.

Section 386.390.1, RSMo, provides that a complaint may be made by any person regarding any act or thing done or omitted to be done by any public utility in violation, or

claimed to be in violation, of any provision of law, promulgated rule, utility tariff, or any order or decision of the Commission. Additionally, Section 386.390.3, RSMo, provides that the Commission is not required to dismiss any complaint because of the absence of direct damage to the complainant. Furthermore, the Commission has continuing jurisdiction over public utilities regarding violations of law. As such, Mr. DeFeo is a proper party in this matter so long as he has a justiciable issue that the Commission may address. In this case, Mr. DeFeo alleged violations of Commission rules regarding improper billing procedures and failure to provide notice of his right to appeal, alleging fact patterns for the Commission to evaluate to determine whether a violation has occurred. This is anticipated and authorized in the Commission's statutory scheme. Moreover, and more importantly, the Commission has denied all of Mr. DeFeo's claims, and the motion to dismiss is therefore moot.

Public Counsel's Response to Recommended Report and Order

OPC's response to the recommended report and order requested that the Commission not issue a final order in this case until after the completion of a thorough investigation into the matter of high water usage readings experienced by MAWC's customers over the past several years. OPC's response fails to explain how that investigation relies on this case, whether any admissible evidence will be produced for the resolution of this case, or what benefit to the public would result from delaying the issuance of a final order in this case. Additionally, Mr. Defeo has been credited back for the losses he has claimed in this case, and holding it open through the duration of such an investigation would only deny both parties the speedy resolution of this matter they are entitled to. Accordingly, the Commission will deny OPC's request.

Mr. DeFeo has failed to produce evidence sufficient to satisfy his burden to demonstrate that MAWC has violated any statute, rule, or tariff provision. Therefore, the Commission need not address any remedies.

THE COMMISSION ORDERS THAT:

1. Mr. DeFeo's complaint is denied.

2. Staff's motion to dismiss is denied as moot.

3. Public Counsel's request to delay the issuance of this report and order is denied.

BY THE COMMISSION

Morris Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of Missouri-American Water Company and DCM Land, LLC, for a Variance from the Company's Tariff Provisions Regarding the Extension of Company Mains	))))	**File No. WE-2021-0390**

REVISED ORDER GRANTING VARIANCES AND GRANTING WAIVER

PUBLIC UTILITIES

§7. Jurisdiction and powers of the State Commission
Section 393.140(11), RSMo, authorizes the Commission to order changes to tariffs, or in any form of contract or agreement, and its rates or charges or services.

§7. Jurisdiction and powers of the State Commission
Although a tariff becomes the law of Missouri, placing the text of rules into a tariff does not limit the power of the Commission to promulgate conflicting rules that it has the statutory authority to create.

§7. Jurisdiction and powers of the State Commission
The Commission is bound to follow a utility's tariff as are the utility's customers and the utility itself. But the existence of a tariff cannot nullify the Commission's authority and obligation to regulate Missouri's utilities in a way that protects the public. This implies that the Commission can waive application of a provision of a utility's tariff if doing so is necessary to protect the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 16th day of March, 2022.

In the Matter of the Joint Application of Missouri-American Water Company and DCM Land, LLC, for a Variance from the Company's Tariff Provisions Regarding the Extension of Company Mains	))))	**File No. WE-2021-0390**

REVISED ORDER GRANTING VARIANCES AND GRANTING WAIVER

Issue Date: March 16, 2022 Effective Date: March 26, 2022

On May 6, 2021, Missouri-American Water Company (MAWC) and DCM Land, LLC (collectively referred to as the "Joint Applicants") filed an application for variances from provisions of MAWC's tariffs with regard to the connection time limit and funding percentage for an extension of MAWC's water main into the Cottleville Trails development. The Joint Applicants also requested a waiver of Commission Rule 20 CSR 4240-4.017(1)(D) requiring a 60-day notice before filing the case.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene. No requests to intervene were received.

The Commission ordered the Staff of the Commission to file a recommendation, which it did on August 13, 2021. Staff argued in its recommendation that the Commission does not have authority to grant a variance from a tariff unless the tariff contains the authority to do so. Staff also objected to a variance of the funding ratio on the grounds that such a variance would be unduly discriminatory.[1] Staff did not object to the grant of the waiver of the time limit for taking service.

[1] Recommendation, (filed Aug. 13, 2021), paragraph 6.

DCM Land and MAWC responded in opposition to Staff's recommendation to deny the variances. The Joint Applicants argue that the Commission has authority under Commission Rule 20 CSR 4240-2.060(4) to grant the requested variances and that they have shown good cause for the Commission to do so.

The parties met in a procedural conference on September 1, 2021. Thereafter, the parties filed a joint proposed procedural schedule which included a date for filing a stipulation of facts, list of issues, and briefs on the issues. Each of those items was filed on September 16, 2021. No party requested a hearing.

On October 14, 2021, the Commission issued an order granting the variances requested by DCM Land and MAWC. That order was given an effective date of October 24, 2021. The Office of the Public Counsel filed a timely application for rehearing on October 22, 2021, which the Commission granted on October 27, 2021.

The Commission issued an Order Directing Filing on January 18, 2022, that asked the parties to file a pleading describing how they would address a list of specific questions identified by the Commission. The parties responded on February 1, 2022, asking that the Commission establish a further procedural schedule whereby the parties would file additional information by February 4, 2022, with each party responding by February 14. The Commission established the requested procedural schedule and Staff, Public Counsel, MAWC, and DCM Land filed the anticipated pleadings.

Findings of Fact

1. MAWC is a water corporation and a public utility subject to the Commission's jurisdiction. MAWC provides water service to approximately 470,000

customers and sewer service to approximately 15,000 customers in the state of Missouri.[2]

2. DCM Land is currently developing the Cottleville Trails subdivision. The development is located in St. Charles County, Missouri, in the City of Cottleville.

3. The Cottleville Trails development has two planned phases. Phase 1 of the project consists of 354 single family residences and 175 apartments and Phase 2 will have an estimated 217 additional homes.

4. A development of this size is not reasonably expected to be completed within 120 days but is reasonably expected to be built over a five-year period.[3]

5. The development is located in the service areas of both MAWC and Public Water Supply District No. 2 of St. Charles County (PWSD#2).[4] However, MAWC and PWSD#2 entered into a territorial agreement[5] that places the development wholly within MAWC's exclusive territory.[6]

6. If not for the territorial agreement, the extension of the main to the Cottleville Trails development would not have been subject to a 120-day time limit for taking service and DCM Land would have been able to recover significantly more of its costs under PWSD#2's specifications and rules.[7]

7. As part of the project, DCM is installing a 12" main in place of an existing 4" main in Old Town Cottleville.[8] The replacement main will improve fire protection in the

[2] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 7.
[3] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 15.
[4] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 5.
[5] The territorial agreement was approved by the Commission in File No. WO-2001-441 on May 15, 2001, and was amended in File No. WO-2012-0088, which was approved by the Commission on November 15, 2011.
[6] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 5.
[7] *See*, Response of DCM Land, LLC to Staff's Recommendation (filed Aug. 23, 2021), Appendix A, Rules 4 and 14 of PWSD#2; and Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), paras. 20 and 21.
[8] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 22.

area and provide water main access to additional nearby properties,[9] including existing buildings in Cottleville.[10]

8. According to DCM Land's estimates, the total cost of the water infrastructure under MAWC's design and material requirements for Phase 1 is $2,100,000, which includes $200,000 to extend the main.[11] DCM has not yet calculated the costs for Phase 2.[12]

9. MAWC estimates its total average annual revenues from the development to be $305,135 once both phases are complete, based on its generally applicable residential rates.[13]

10. The Joint Applicants request variances from part of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2. and 3., and a variance from PSC MO No. 13, 1st Revised Sheet No. R 51, Rule 23C.6.[14] The variance requested from Rule 23A.2. would change the time limit for customers to take service after MAWC accepts the main and determines it is ready for service from 120 days to five years to allow the build out and purchase of the homes and apartment buildings.

11. The variances requested from Rule 23A.3. and Rule 23C.6. would change the funding ratio for the main extension between DCM Land and MAWC from the current ratio of 95:5 (95% DCM Land and 5% MAWC) to a funding ratio of 86:14 (86% DCM Land and 14% MAWC). MAWC's service area in St. Charles County, including the Cottleville

[9] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 22.
[10] Linam Affidavit, MAWC's Response to Order Directing Filing.
[11] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 20.
[12] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 20.
[13] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), paras. 18 and 19. (MAWC estimates its total average annual revenue from the single family homes to be $158,344 for Phase 1 and $96,791 for Phase 2. Additionally, MAWC estimates its total average annual revenue from the apartments to be $50,000.)
[14] The tariff provisions are referred as "Rule 23A.2", "Rule 23A.3", and "Rule 23C.6".

Trails development, is a part of the St. Louis Metro District for the purpose of MAWC's tariff Rule 23 – Extension of Company Mains.[15]

12. MAWC's tariff provides that only the St. Louis Metro District has the 95:5 funding ratio for main extensions. All of MAWC's other districts use the 86:14 ratio.[16] The cost difference to DCM Land of the funding ratio variance is estimated to be $189,000 for the Phase 1 water infrastructure construction.[17]

Conclusions of Law

A. Section 393.140(11) RSMo authorizes the Commission to order changes to tariffs, or in any form of contract or agreement, and its rates or charges or services:

> Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule or regulation relating to any rate, charge or service, or in any general privilege or facility, which shall have been filed and published by a gas corporation, electrical corporation, water corporation, or sewer corporation in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect.

B. Section 393.140(11), RSMo, gives the Commission authority to require a water corporation to file a tariff with the Commission showing "all rules and regulations relating to rates, charges or service used or to be used" by that water corporation. The Commission is also given authority to "prescribe the form of every such schedule, and from time to time prescribe by order such changes in the form thereof as may be deemed wise."

[15] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 5.
[16] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 14.
[17] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 21.

C. Missouri's courts have held that a properly filed tariff "acquires the force and effect of law; and as such it is binding upon both the corporation filing it and the public which it serves."[18]

D. However, Missouri's courts have also recognized that under some circumstances Commission-approved variances from tariffs are appropriate and necessary. For example, in a 1931 case, *State ex rel. Kennedy v. Public Service Com'n*,[19] the Missouri Supreme Court affirmed a Commission decision to uphold against challenge a water tariff that indicated the main extension policies of the utility could be varied with the approval of the Commission in "exceptional" cases.

E. While the *Kennedy* decision recognizes that a tariff provision may be waived, it relies on the existence of a provision in the tariff authorizing a variance as the basis for the Commission's authority to grant such a variance.[20] But a subsequent court case calls into question the assumption that the Commission's authority to grant a necessary variance is limited to the authority established in a utility's tariff.

F. In a 2006 decision, *State ex rel. Missouri Gas Energy v. Public Service Com'n,*[21] the Court of Appeals upheld the revisions of the Commission's cold weather rule against a challenge by two of the affected utilities. The utilities argued that their Commission-approved tariffs incorporated the terms of the Commission's original cold weather rule and that the Commission could not promulgate a new rule that would vary the terms of their tariffs without first instituting a contested case to consider proposed modification of the tariffs. In rejecting that argument, the Court held that "although a

[18] *State ex rel. St. Louis County Gas Co. v. Pub. Serv. Com'n*, 286 S.W. 84, 86 (Mo. 1926).
[19] 42 S.W. 2d 349 (Mo. 1931).
[20] *Kennedy*, at 353.
[21] 210 S.W.3d 330 (Mo. App. W.D. 2006).

properly passed tariff becomes the law of Missouri, placing the text of rules, which the Commission has already passed, into a tariff does not limit the power of the Commission to promulgate conflicting rules that it has the statutory authority to create."[22]

G. The *Missouri Gas Energy* ruling is important because it recognizes that while various Court decisions have said that "a tariff has the same force and effect as statute, and it becomes state law," and indeed, the *Missouri Gas Energy* decision contains that very language,[23] a tariff is not a statute. The Commission is bound to follow a utility's tariff as are the utility's customers and the utility itself. But the existence of a tariff cannot nullify the Commission's authority and obligation to regulate Missouri's utilities in a way that protects the public.[24] This implies that the Commission can waive application of a provision of a utility's tariff if doing so is necessary to protect the public interest. That authority is implied by the Commission's statutory authority, and is not derived just from authority granted by a tariff.

H. Certainly, the Commission has granted variances from utility tariffs in the past. Indeed, the Commission has promulgated a rule - 20 CSR 4240-2.060(4) - to establish the information that is to be included in an application for variance from Commission rules and tariff provisions.

I. Staff has argued that the "filed-tariff doctrine" means that the Commission can grant a variance from a tariff only if the tariff itself puts a utility's customers on notice that the terms of the tariff may be varied or changed.[25] MAWC's tariff does in fact contain a general provision stating that "[t[he Company may, subject to the approval of the

[22] *Missouri Gas Energy*, at 337.
[23] *Missouri Gas Energy*, at 337.
[24] Section 393.140, RSMo.
[25] *See*. Staff's Response to Order Directing Filing, (filed February 4, 2022).

Commission, prescribe additional rates, rules or regulations or to alter existing rates, rules or regulations as it may from time to time deem necessary or proper."[26] Thus, readers of the tariff are notified that its provisions may be changed from time to time with the approval of the Commission.

J. Section 393.130.3, RSMo, prohibits any water corporation from making or granting any "undue or unreasonable preference or advantage to any person, corporation, or locality". Nor may it subject any person, corporation, or locality to any "undue or unreasonable prejudice or disadvantage in any respect whatsoever." Not all preferences or prejudices are forbidden. "Discrimination is not unlawful unless arbitrary or unjust."[27] "If discrimination is reasonable because of the particular circumstances in the case, rates are not struck down merely because of the dissimilarity.[28] "Whether discrimination is unlawful and unjust or the circumstances are essentially dissimilar is usually a question of fact."[29]

K. The Commission has allowed variance from its rules, at the request of a developer, to lower costs.[30]

L. The rule variance granted in *Deaconess Manor* did not affect the rate classification of the units in question, which were billed in accordance with the utility's generally applicable residential tariffs.[31]

[26] PSC MO No. 13, 1st Revised Sheet No. R9, Rule 2C.
[27] *Kennedy,* at 352.
[28] *State ex rel. Missouri Office of Public Counsel v. Missouri Pub. Serv. Com'n,* 782 S.W.2d 822, 825 (Mo. App. 1990).
[29] *Id*.
[30] *Deaconess Manor Ass'n v. Pub. Serv. Com'n,* 994 S.W.2d 602, 606-607 (Mo. App. 1999).
[31] *Id*. at 608-609

Decision

In considering the application for variances, the Commission must consider two factors: First, a question of law, does the Commission have legal authority to grant the requested variances? As explained in the Conclusions of Law section of this order, the Commission finds that it does have the legal authority to grant a variance from MAWC's tariff. Second, a question of fact, does the application demonstrate good cause to grant the variances? In other words is the preference that would be granted to DCM Land undue or unreasonable within the meaning of the controlling statute, Section 393.130.3, RSMo.

DCM Land and MAWC request a variance from two provisions of MAWC's tariff. The first requests a variance from Rule 23A.2.[32] That tariff provision relates to the extension of MAWC's water mains, and provides that MAWC will be responsible for main extensions where the cost of the extension does not exceed four times the estimated average annual revenues from new applicants. New applicants are defined as those who commit to purchase water service for at least one year and guarantee that they will take water service within 120 days after the new main is ready for service. Because of the large size of the Cottleville Trail development and the time it will take to build the residences that will take water service, it is not reasonable to expect those new applicants to take service within 120 days after the new main is constructed. For that reason it is reasonable to grant the requested variance to allow five years for those applicants to take service within the meaning of the tariff provision.

[32] PSC MO No. 13, 1st Revised Sheet No. R48.

The second variance requested is from Rule 23A.3[33] and 23C.6[34]. Both rules contain a provision that defines the percentage of the cost of extending a water main that will be borne by MAWC and the percentage that will be borne by the developer. Both provisions establish a 95:5 percentage ratio for contracts in the St. Louis Metro District, with the developer being responsible for 95 percent of the cost and MAWC responsible for 5 percent. For all MAWC's other districts, the ratio is 86:14 percent with the developer being responsible for 86 percent of the cost and MAWC responsible for the remaining 14 percent. The Cottleville Trails development is in the St. Louis Metro District, but DCM Land and MAWC ask that for this development the 86:14 ratio be applied instead of the 95:5 ratio.

MAWC and DCM Land argue this variance is appropriate because the Cottleville Trails development will be located on land that could be served by PWSD#2, but for a Commission-approved territorial agreement between MAWC and the public water district that places the land in the exclusive service territory of MAWC. It would be less costly for DCM Land to obtain water service for its development from the public water district and, if it must take service from MAWC, it believes it is entitled to pay the lesser amount required by the 86:14 ratio that it would pay in any MAWC district outside the St. Louis Metro district. MAWC explains that it, and ultimately its other ratepayers, will benefit from the completion of the Cottleville Trails development and the provision of water service to that development by MAWC. MAWC will benefit because it will obtain additional revenue from the development and other ratepayers will benefit because the larger water main that will be installed to serve the new development will afford greater fire protection to

[33] PSC MO No. 13, 1st Revised Sheet No. R48.
[34] PSC MO No. 13, 1st Revised Sheet No. R51.

other nearby existing buildings as well as future development. The scope of the variances sought in this case extend only to the development phase of the project. Ultimately, service will be provided to residential customers within the proposed development at MAWC's generally applicable residential rate, as reflected in its current tariffs, so that residents of the development will be treated the same as MAWC's other residential customers.

The Commission has reviewed the verified application and other pleadings, Staff's verified recommendation, the stipulation of facts, and the briefs on the issues. Because of the added fire protection and access gained to nearby areas, the number of new customers taking service and the revenue expected to be produced, and the specific facts surrounding the location of this development within the service territory of St. Louis Metro District of MAWC instead of another tariffed district or the PWSD#2, the Commission finds that the Joint Applicants have demonstrated good cause to grant the variances as requested. For these reasons, the Commission has also determined that such variances are reasonable and not unduly discriminatory. The Commission will grant the requested tariff variances.

The Joint Applicants also requested that the Commission direct that any Main Extension Contract, as referenced in PSC MO No. 13, 1st Revised Sheet No. R 51, Rules 23C.4. entered into with DCM Land for Cottleville Trails reflect the variances granted.[35] The Commission will grant this request.

In addition to variance from the tariff provisions, the Joint Applicants requested a waiver for this case of 20 CSR 4240-4.017(1) requiring that notice of intended case filings

[35] Stipulation of Facts and List of Issues, (filed Sept. 16, 2021), para. 12.

be filed at least 60-days prior to the application. Commission Rule 20 CSR 4240-4.017(1)(D) allows the Commission to grant a waiver of the 60-day notice requirement for good cause. The Joint Applicants stated that they have had no communication with the Office of the Commission within the prior 150 days regarding any substantive issue likely to be in this case. The Joint Applicants also explain that failure to waive the 60-day notice requirement could result in a costly delay of the development of Cottleville Trails. The Commission finds good cause to waive the 60-day notice requirement and it will be granted.

Because this is an order being issued after rehearing and because DCM Land has described a financial need to have these variances issued as soon as possible, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The Joint Applicants are granted a variance from part of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.2. so that 120 days is changed to five years for DCM Land's Cottleville Trails development.

2. The Joint Applicants are granted variances from parts of PSC MO No. 13, 1st Revised Sheet No. R 48, Rule 23A.3. and PSC MO No. 13, 1st Revised Sheet No. R 51, Rule 23C.6. so that the ratio of 95:5 (i.e., 95% DCM Land funded and 5% MAWC funded) is changed to a ratio of 86:14 (i.e., 86% DCM Land funded and 14% MAWC funded) for DCM Land's Cottleville Trails development.

3. Any Main Extension Contract, as referenced in PSC MO No. 13, 1st Revised Sheet No. R 51, Rules 23C.4. entered into by MAWC with DCM Land for Cottleville Trails shall reflect the variances granted.

4. The Joint Applicants are granted a waiver of the 60-day notice requirement in 20 CSR 4240-4.017(1) in this matter.

5. This order shall become effective on March 26, 2022.

BY THE COMMISSION

Morris Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Request of The Empire District Electric Company d/b/a Liberty for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	**File No. ER-2021-0312** Tariff No. JE-2021-0211

REPORT AND ORDER

RATES

§119. Rate design, class cost of service for electric utilities
The Commission has broad discretion when designing rates. The Commission looks to the Class Cost of Service study as one factor, but also considers other factors when determining an appropriate class rate allocation.

§119. Rate design, class cost of service for electric utilities
Empire and Missouri Energy Consumer Group's analysis show that the residential class is paying somewhat less than its cost-of-service. Yet, Empire is not losing money by providing electric service to the residential class, though Empire is earning less of a return from the residential class than from other classes. This is not surprising because the residential class is the most numerous class and accordingly has a higher cost of service relative to other classes.

§119. Rate design, class cost of service for electric utilities
The Commission continues to believe that rates based upon costs is appropriate. The Commission may, in a future rate case, transition all the classes more toward their costs of service. However, the Commission determines that making changes in the way rates are allocated among the classes is not appropriate at this time. Better customer usage data, more certainty about the COVID-19 pandemic and recovery, and potentially lower inflation all make a future rate case a better vehicle to bring rates and costs more into parity.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Request of The Empire District Electric Company d/b/a Liberty for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	**File No. ER-2021-0312** Tariff No. JE-2021-0211

REPORT AND ORDER

Issue Date: April 6, 2022

Effective Date: April 16, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Request of The Empire District Electric Company d/b/a Liberty for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	**File No. ER-2021-0312** Tariff No. JE-2021-0211

REPORT AND ORDER

TABLE OF CONTENTS

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REPORT AND ORDER

I. Procedural History

On May 28, 2021, The Empire District Electric Company (Empire) filed tariff sheets designed to implement a general rate increase for electric service. The submitted tariff sheets (Tracking No. JE-2021-0211) proposed to increase Empire's gross annual electric revenues by approximately $50 million (approximately 7.61 percent).[1] In addition to the electric revenue increase, Empire also sought to recover $29.9 million in costs associated with the mid-February cold weather event known as Winter Storm Uri. Empire's total requested rate increase including Winter Storm Uri was $79.9 million. The tariff had an effective date of June 27, 2021. 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 April 25, 2022.

The Commission directed notice of Empire's filing and set an intervention deadline. The Commission granted intervention requests from the following entities: Midwest Energy Consumers Group (MECG), Renew Missouri Advocates (Renew Missouri), The City of Ozark, The Empire District Electric SERP Retirees (EDESR), and The Empire District Retired Members & Spouses Association (EDRA).

The Commission issued an order establishing a procedural schedule and setting an evidentiary hearing. The Commission's order also established a test year encompassing October 1, 2019, through September 30, 2020, updated through June 30, 2021.

[1] Cover Letter, filed May 28, 2021.

During the week of November 15, 2021, the Commission held three WebEx local public hearings to give the Commission an opportunity to hear from the public about Empire's requested rate increase.[2] The Commission also received numerous written comments from the public.

The parties prefiled direct, rebuttal, and surrebuttal testimony. Prior to the start of the evidentiary hearing four separate partial stipulation and agreements were filed. On January 28, 2022, the Staff of the Commission (Staff), Empire, MECG, and Renew Missouri filed a *Non-Unanimous Partial Stipulation and Agreement* that resolves many of the issues between the parties. On January 31, 2022, Staff, the Office of the Public Counsel (OPC) and Empire filed a *Second Partial Stipulation and Agreement*. On February 4, 2022, Empire and EDRA filed a *Stipulation and Agreement as to EDRA* that resolves issues concerning retiree benefits. On February 4, 2022, Empire, Staff, and the OPC filed a *Fourth Partial Stipulation and Agreement*. The fourth stipulation removes the Asbury generation plant issue and the Winter Storm Uri issue from consideration for recovery in this rate case. On March 9, 2022, the Commission issued an order approving the four stipulation and agreements as a resolution of the issues contained therein.

The Commission held an evidentiary hearing on February 7, 2022, to address the single remaining issue for the Commission's determination: The question of how Empire's stipulated revenue requirement should be allocated among Empire's customer classes.[3]

Case Submission

The Commission admitted the testimony of 55 witnesses and received 119 exhibits into evidence. Briefs were filed according to the modified procedural schedule.

[2] Transcript, Vols 2-4.
[3] Commission Rule 20 CSR 4240-2.115(2)(D).

The final reply briefs were filed on March 8, 2022, and the case was deemed submitted for the Commission's decision on that date.[4]

OPC's Motion to Clarify

On March14, 2022, OPC filed a motion to clarify the Commission's March 9, 2022, Order Approving Stipulations and Agreements. The Commission's order states that the parties agreed to a starting rate base amount $2,049,632,599. OPC points out that the Fourth Partial Stipulation and Agreement reduced that amount by $20,000,000 to $2,029,632,599. The Commission will clarify the correct starting rate base amount.

II. General Matters

General Findings of Fact

The Commission gives each item or portion of a witness's testimony individual weight based upon the detail, depth, knowledge, expertise, and credibility demonstrated with regard to that specific testimony. Consequently, the Commission will make additional specific weight and credibility decisions as are necessary.[5] Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.[6]

1. Empire is engaged in the business of the manufacture, transmission, and distribution of electricity. Empire is a regulated utility providing electric service in parts of

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

[5] 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).

[6] 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)

Missouri, Kansas, Oklahoma, and Arkansas. Empire provides electric service to approximately 157,958 electric customers in Missouri, including 133,243 residential customers, 24,341 commercial and industrial customers, and 374 lighting customers. [7]

2. OPC is a party to this case pursuant to Section 386.710(2), RSMo[8], and by Commission Rule 20 CSR 4240-2.010(10).

3. Staff is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

General Conclusions of Law

A. Empire is an "electrical corporation" and a "public utility" as defined in Sections 386.020(15) and 386.020(43), RSMo, respectively, and as such is subject to the jurisdiction, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes.

B. The Commission's subject matter jurisdiction over Empire's rate increase request is established under Section 393.150, RSMo.

C. Section 393.150, RSMo, authorizes the Commission to suspend the effective date of a proposed tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

D. Empire can charge only those amounts set forth in its tariffs.[9]

E. Subsection 393.140(11), RSMo, gives the Commission authority to regulate the rates Empire may charge its customers for electric service.

[7] Exhibit 36, Lyons Direct, p. 5.
[8] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016 and subsequently revised or supplemented.
[9] Sections 393.130 and 393.140, RSMo.

F. Utilities are required to provide safe and adequate service.[10]

G. In determining the rates Empire may charge its customers, the Commission is required to determine whether the proposed rates are just and reasonable.[11]

H. 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, Empire bears the burden of proving that its proposed rate increase is just and reasonable.

I. In order to carry its burden of proof, Empire must meet the preponderance of the evidence standard.[12] In order to meet this standard, Empire must convince the Commission it is "more likely than not" that Empire's proposed rate increase is just and reasonable.[13]

J. Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony."[14]

K. An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence.[15]

[10] Sections 393.130 and 393.140, RSMo.
[11] Section 393.150.2, RSMo.
[12] *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).
[13] *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).
[14] *State ex rel. Public Counsel v. Missouri Public Service Com'n*, 289 S.W.3d 240, 247 (Mo. App. 2009)
[15] *State ex rel. Missouri Office of Public Counsel v. Public Service Com'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

L. Where a decision of the Commission rests on the exercise of regulatory discretion, a reviewing court will not substitute its judgment for that of the Commission, particularly on issues within its area of expertise.[16]

III. Allocation of Empire's Rate Adjustment

How should any rate increase be allocated among Empire's customer classes?

Findings of Fact:

4. Empire's current rate structure includes base rates, a fuel adjustment clause factor, and an Energy Efficiency Cost Recovery Charge charge. The base rates include monthly customer charges, energy charges, and demand charges. For certain rate classes, the energy charges vary by season and consist of declining rate steps or blocks (the rates decrease as monthly consumption increases).[17]

5. Empire's customers are presently served under one of twelve rate classes based on type of service and load characteristics.[18]

6. Allocation consists of assigning rate base and expense items to individual rate classes based on allocators that reflect their underlying cost of service.[19] Variations in the unit cost of service support the need for separate classes.[20]

7. There is no one definitive method of allocating costs to a class based on a Class Cost of Service (CCOS) study.[21]

[16] *State ex rel. Missouri Gas Energy v. Public Service Com'n*, 186 S.W.3d 376, 382 (Mo. App. 2005)
[17] Exhibit 36, Lyons Direct, p. 6.
[18] Exhibit 36, Lyons Direct, p. 5.
[19] Exhibit 36, Lyons Direct, p. 10.
[20] Exhibit 36, Lyons Direct, p. 13.
[21] Exhibit 201, Marke Rebuttal, p. 39.

8. The first step in developing proposed rates is to establish the overall revenue requirement to be recovered from base rates.[22]

9. Then those costs are allocated among customer classes. After that the focus is on designing the rates for appropriate cost recovery.[23]

10. If class rates are aligned, the total cost allocated to a given class represents the costs that class would pay to produce an equal rate of return compared to other classes.[24]

11. If a rate class produces a rate of return that is lower than the system rate of return, then the revenues recovered from the rate class are less than its cost of service. If a rate class produces a rate of return that is higher than the system rate of return, then the revenues recovered from the rate class are more than its cost of service.[25]

12. The amount of energy used by customers is measured in kilowatt-hours (kWh).[26]

13. Empire prepared a CCOS study.[27] MECG did not prepare a CCOS study but modified Empire's CCOS study to produce its own results.[28]

14. Empire's CCOS study:

a. Evaluated the allocation of production-related costs proposed by Staff and MECG in the prior case.

b. Revised its classification of distribution plant accounts 364 and 366 to reflect the zero-intercept study proposed by Staff.

[22] Exhibit 36, Lyons Direct, p. 31.
[23] Exhibit 201, Marke Rebuttal, p. 39.
[24] Exhibit 201, Marke Rebuttal, p. 39.
[25] Exhibit 36, Lyons Direct, p. 13.
[26] Exhibit 36, Lyons Direct, p. 7.
[27] Exhibit 36, Lyons Direct, p. 2.
[28] Exhibit 352, Maini Direct, p. 14.

c. Evaluated the allocation of primary and secondary distribution plant facilities proposed by Staff and MECG in the prior case.

d. Firmed-up interruptible revenues to properly match with cost allocation of all fixed production plant, as proposed by MECG in the prior case.[29]

15. Empire's rate classes prior to this case were:

a. RG – Residential
b. CB –Commercial
c. SH – Small Heating
d. GP – General Power
e. TS – Transmission Service
f. TEB – Total Electric Building
g. PFM – Feed Mill/Grain Elevator
h. LP – Large Power
i. MS – Miscellaneous
j. SPL – Municipal Street Lighting
k. PL – Private Lighting
l. LS – Special Lighting

16. Different classes have different costs of service.[30] The cost of service for the Residential General (RG) rate class is greater than the cost of service for the Large Power (LP) rate class. The cost of service for the RG rate class was $0.17 per kWh prior to this rate case, while the LP rate class cost of service was $0.07 per kWh.[31]

17. The unit cost of service for the RG rate class is $2,096 per customer, while the unit cost of service for the LP rate class is $1,485,782 per customer.[32]

18. The RG class represents a majority of the Company's customers with 133, 243 customers, accounting for 39.6 percent of Empire's electric sales with an average customer usage of 12,554 kWh per RG class customer.[33]

[29] Exhibit 36, Lyons Direct, p. 4.
[30] Exhibit 36, Lyons Direct, p. 12.
[31] Exhibit 36, Lyons Direct, p. 12.
[32] Exhibit 36, Lyons Direct, p. 12.
[33] Exhibit 36, Lyons Direct, p. 7.

19. The LP class consists of 43 customers and accounts for 20.7 percent of Empire's electric sales with an average customer usage of 20,370,297 kWh per LP class customer.[34]

20. The results of Empire's class cost of service study support a higher rate increase for residential customers since their current rates recover less than the cost of service.[35]

21. Empire asks the Commission to increase residential customer rates 8.3 percent, which would be a greater increase than the overall rate increase.[36]

22. MECG's results indicate that the RG and some of the lighting classes produce a rate of return below Empire's overall rate of return, and are thereby paying rates below their cost of service.[37]

23. MECG originally recommended setting class revenue requirements to eliminate 25 percent of what MECG terms the "residential subsidy" to further align the RG class with its class cost of service.[38]

24. MECG modified its request and now asks the Commission to increase residential customer's rates 9.9 percent.[39]

25. In Empire's 2014 and 2016 rate cases, File Nos. ER-2014-0351, and ER-2016-0023, the Commission took steps to realign class rates and address the "residential subsidy." However, in Empire's last rate case, File No. ER-2019-0374, the

[34] Exhibit 36, Lyons Direct, p. 7.
[35] Exhibit 37, Lyons Rebuttal, p, 17.
[36] Transcript, p. 111.
[37] Exhibit 352, Maini Direct, p. 29.
[38] Exhibit 352, Maini Direct, p. 35.
[39] Transcript, p. 54, and MECG Initial brief, filed February 25, 2022.

Commission applied the rate adjustment equally across the classes due to a lack of reliable data due to the large number of estimated bills.[40]

26. After October 15, 2022, the RG rate schedule will transition to a time variant structure. The non-time variant structure will remain available for customers who opt-out.[41]

27. MECG's witness, Kavit Maini, testified that Empire's average industrial rate is in excess of 22 percent higher than the state, regional and national averages.[42]

28. OPC agrees with MECG that large commercial and industrial customers are paying above state, regional and national averages; however, OPC's witness, Dr. Marke, states that this is true for all Empire's classes.[43]

29. Staff recommends that all customers begin to be billed in a manner that recognizes the impact of time of day on energy pricing or system resources. Staff recommends that all customers be charged rates that better align revenue recovery with cost causation, and that will provide customers with information to make choices about when to use energy that will incur lower system costs, or to bear some responsibility for when they use energy that incurs system costs.[44]

30. This general rate case, and the time variant rates approved in the partial stipulations,[45] provides an opportunity to begin to better align energy consumption with

[40] Exhibit 352, Maini Direct, p. 31-32.
[41] Non-Unanimous Partial Stipulation and Agreement, approved in the Commission's March 9, 2022, Order Approving Stipulations and Agreements.
[42] Exhibit 352, Maini Direct, p. 9, explaining results of Edison Electric Institute data.
[43] Exhibit 201, Marke Rebuttal, p. 42.
[44] Exhibit 118, Lange Rebuttal, p. 2.
[45] Non-Unanimous Partial Stipulation and Agreement, approved in the Commission's March 9, 2022, Order Approving Stipulations and Agreements.

cost causation within the RG class by restructuring Empire's residential customers to a time variant time-of-use (ToU) rate structure.[46]

31. Staff states that Empire's customers are essentially all now equipped with Advanced Metering Infrastructure (AMI) metering, but only a brief usage history is available for most customers.[47]

32. AMI meters, often referred to as "smart meters," are digital meters with advanced features and capabilities beyond traditional electricity meters. AMI is an integrated system of meters, communications networks, and data management systems that enables two-way communication between utilities and customers.[48]

33. Empire's AMI investment will enable monthly meter reading to be conducted remotely, avoiding the need to send a technician to read each meter on premise.[49]

34. AMI improves the efficiency, quality, and range of services provided to customers by providing better data about energy usage so customers can be more informed and make choices about how they consume their energy.[50]

35. Restructuring the RG rate schedule to a ToU structure minimizes initial customer impact, and improves or creates awareness of time-variant rates and the seasonal and daily differences in energy cost causation.[51]

36. Classes are a shortcut for setting rates and, in this case, distinctions were based on annual demand and end use. With the introduction of AMI metering, billing customers by the energy they consume is now capable of providing a more meaningful

[46] Exhibit, 105 Staff Class Cost of Service Report, p. 10.
[47] Exhibit, 105 Staff Class Cost of Service Report, p. 10.
[48] Exhibit 15, Hook Direct, p. 3.
[49] Exhibit 15, Hook Direct, p. 13.
[50] Exhibit 15, Hook Direct, p. 4.
[51] Exhibit, 105 Staff Class Cost of Service Report, p. 10.

price signal than billing customers based on the rate schedule under which they are served.[52]

37. Inflation is at a 30-year high and there is a still a large degree of uncertainty surrounding the ongoing COVID-19 pandemic.[53]

38. The test year in this case included the COVID-19 pandemic, which forced business shut-downs and caused millions of people to work from home.[54] State-mandated COVID-19 business shutdowns and shelter-at-home directives had a much larger impact on test-year sales than weather; test-year residential sales were significantly higher, and non-residential sales were significantly lower than in prior years.[55]

39. The COVID-19 variables are statistically significant and explain the increase in residential usage and drop in commercial daily usage after March 15, 2020.[56]

40. Empire has not returned to pre-COVID customer facing practices.[57]

41. Empire's witness, John Reed, Chairman and Chief Executive Officer of Concentric Energy Advisors, Inc., testified about investor concerns about inflation. "Given the economic stimulus that has been provided to support the economy in response to the COVID-19 pandemic in the form of both monetary policy from the Federal Reserve and fiscal policy from the U.S. Congress, there is an increased likelihood of upward pressure on inflation over the next several years."[58]

[52] Exhibit 118, Lange Rebuttal, p. 24, 26.
[53] Exhibit 201, Marke Rebuttal, p. 42.
[54] Exhibit 32, Fox Direct, p. 4.
[55] Exhibit 32, Fox Direct, p. 7.
[56] Exhibit 32, Fox Direct, p. 13.
[57] Exhibit 39, Harrison Direct, p. 3.
[58] Exhibit 33, Reed Direct, p. 24.

42. OPC witness, Dr. Geoff Marke, credibly testified that Empire's customers have overall lower mean and median household incomes, and higher poverty rates relative to the United States and Missouri averages.[59]

43. Dr. Marke credibly testified that low-income customers, earning less than $27,000 a year, have seen employment rates decrease 24.7 percent since January 2020.[60]

44. Staff and OPC recommend the Commission allocate any rate increase as an equal percentage increase across all customer classes.[61]

Conclusions of Law:

M. Section 393.130, RSMo 2016 states;

> No … electrical corporation … shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

In interpreting that statute more than 90 years ago, the Missouri Supreme Court said: "[R]ates or charges to be valid must not be unjust, unreasonable, unjustly discriminatory, or unduly preferential."[62]

N. The Commission has much discretion in determining the theory or method it uses in determining rates[63] and can make pragmatic adjustments called for by particular circumstances.[64]

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[59] Exhibit 201, Marke Direct, p. 10.
[60] Exhibit 201, Marke Direct, p. 9.
[61] Exhibit 201, Marke Rebuttal, p. 42.
[62] *State ex rel. Laundry, Inc. v. Public Service Com'n* 34 S.W.2d 37, 44, 327 Mo. 93, 109 (Mo. 1931)
[63] *State ex rel. Public Counsel v. Public Service Com'n*, 274 S.W.3d 569, 586 (Mo. App. 2009).
[64] *State ex rel. U.S. Water/Lexington v. Missouri Public Service Com'n* 795 S.W.2d 593, 597 (Mo. App. 1990)

O. Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying "[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."[65]

P. For an electrical corporation that has elected to Plant-In-Service-Accounting (PISA) under Section 393.1400, RSMo, (as has Empire, File No. EO-2019-0046) Section 393.1655.6, RSMo, provides that:

> If the difference between (a) the electrical corporation's class average overall rate at any point in time while this section applies to the electrical corporation, and (b) the electrical corporation's class average overall rate as of the date rates are set in the electrical corporation's most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under subsection 5 of section 393.1400, reflects a compound annual growth rate of more than two percent for the large power service rate class, the class average overall rate shall increase by an amount so that the increase shall equal a compound annual growth rate of two percent over such period for such large power service class, **with the reduced revenues arising from limiting the large power service class average overall rate increase to two percent to be allocated to all the electrical corporation's other customer classes through the application of a uniform percentage adjustment to the revenue requirement responsibility of all the other customer classes.** (Emphasis added)

This statute does not have any direct impact on this rate case because the cap it imposes has not yet been met. But it does mean that in a future rate case the Residential rate class, as well as Empire's other rate classes, could be statutorily required to subsidize the Large Power Service class. It also means that the legislature has recognized that

[65] *Spire Missouri, Inc. v. Missouri Public Service Com'n* 607 S.W.3d 759, 771 (Mo. App. 2020), *quoting National Ass'n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 103 S.Ct 2727, 77 L.Ed. 2d 195 (1983). That decision was quoting an earlier United State Supreme Court decision, *Colorado Interstate Gas Co. v. Federal Power Commission,* 324 U.S. 581, 589, 65 S.Ct. 829, 833, 89 L.Ed. 1206 (1945).

class cost of service decisions can be based on consideration of public policy interests rather than a strict mathematical calculation.

IV. Decision:

The Commission has broad discretion when designing rates. The Commission looks to the CCOS study as one factor, but also considers other factors when determining an appropriate class rate allocation. In this case, the Commission finds the arguments of OPC and Staff persuasive. This is not the appropriate time to allocate Empire's rate adjustment other than by allocating an equal percentage of the rate increase to each customer class. There are a number of factors that support the Commission's decision.

Both Empire and MECG urge the Commission to allocate rates to move the residential class more toward its cost of service. In both 2014 and 2016 the Commission allocated rates to shift classes closer to paying their relative costs of service. Still, in Empire's most recent rate case, File No. ER-2019-0374, uncertain data from a large number of estimated bills, persuaded the Commission to not move the classes closer to their relative costs of service at that time. The Commission was not convinced of the accuracy of any of the CCOS studies in that case. The COVID-19 pandemic also began in Missouri during that prior rate case with Missouri's Governor declaring a state of emergency due to the COVID-19 pandemic prior to the Commission issuing its Report and Order in that case.[66]

Empire prepared a CCOS study in this case, which was modified by MECG. The Commission is not addressing the validity of Empire's CCOS study, because the CCOS study, and MECG modified study, presented in this case are not the primary factor driving the Commission's decision. Empire and MECG's analysis show that the residential class

[66] Missouri, Executive order 20-02, issued March 13, 2020.

is paying somewhat less than its cost-of-service. Yet, Empire is not losing money by providing electric service to the residential class, though Empire is earning less of a return from the residential class than from other classes. This is not surprising because the residential class is the most numerous class and accordingly has a higher cost of service relative to other classes. Staff questions the validity of the CCOS study and modification presented, and urges the Commission not to make any class responsibility shifts at this time. Instead, Staff recommends delaying any class responsibility shifts until Empire's next rate case when those changes can be premised on more reliable studies due to better data being available from AMI meters.

Empire's residential customer class contains some of the most economically challenged customers in Missouri with lower overall mean and median household incomes, and higher poverty rates relative to the United States and Missouri averages. OPC points out that low-income customers, earning less than $27,000 a year, have experienced an employment rate decrease of 24.7 percent since January 2020. Currently inflation is at a thirty year high and there is continued uncertainty about the COVID-19 pandemic and recovery. While these factors affect commercial and industrial customers, the impact on residential customers is more significant given the economic challenges facing those customers.

Empire has gone through several changes leading up to, and as a consequence of, this rate case. Several customer classes are being consolidated as part of agreements approved by the Commission in this case. Time variant rates will be introduced or expanded for certain classes, allowing customers to have greater control of their energy costs. AMI metering is now available to almost all of Empire's customers, and with the advent of AMI more meaningful data will be available for a future Commission to consider

in Liberty's next rate case. AMI also brings efficiencies that will save on costs such as meter reading, which is by sheer number a relatively large expense of the residential class.

The Commission continues to believe that rates based upon costs is appropriate. The Commission may, in a future rate case, transition all the classes more toward their costs of service. However, the Commission determines that making changes in the way rates are allocated among the classes is not appropriate at this time. Better customer usage data, more certainty about the COVID-19 pandemic and recovery, and potentially lower inflation all make a future rate case a better vehicle to bring rates and costs more into parity. The Commission will order that the increase approved in this rate case be allocated as an equal percentage to each customer class.

So that Empire may expeditiously implement the allocations approved herein and the rate adjustments approved in the Commission's March 9, 2022, *Order Approving Stipulations and Agreements*, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The tariff sheets submitted on May 28, 2021, by Empire, assigned Tariff No. JE-2021-0211 are rejected.

2. Empire is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this Report and Order and the Commission's March 9, 2022, *Order Approving Stipulations and Agreements*.

3. The starting rate base amount agreed to by the parties, and approved by the Commission in its March 9, 2022, *Order Approving Stipulations and Agreements* is $2,029,632,599.

4. Empire shall file any information required by Section 393.275.1, RSMo, and Commission Rule 20 CSR 4240-10.060 no later than May 2, 2022.

5. This Report and Order shall become effective on April 16, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of TUK, LLC to Sell its Sewer Assets to Seven Springs Sewer & Water LLC	)))	**File No. SM-2022-0131**

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

CERTIFICATES

§21. Grant or refusal of certificate generally

In determining whether to grant a utility a certificate of convenience and necessity (CCN), the Commission has articulated five criteria to guide its determination of whether granting the CCN is "necessary or convenient for the public service" under Section 393.170, RSMo 2016: (1) there must be a need for the service, (2) the applicant must be qualified to provide the proposed service, (3) the applicant must have the financial ability to provide the service, (4) the applicant's proposal must be economically feasible, and (5) the service must promote the public interest. *In Re Intercon Gas, Inc.,* 3 Mo P.S.C. 554, 561 (1991).

§21. Grant or refusal of certificate generally

The Commission granted Seven Springs Sewer & Water LLC a certificate of convenience and necessity to operate a sewer system for residential customers in Jefferson County, Missouri upon purchase of the system from TUK, LLC.

SEWER

§2. Certificate of convenience and necessity

The Commission granted Seven Springs Sewer & Water LLC a certificate of convenience and necessity to operate a sewer system for residential customers in Jefferson County, Missouri upon purchase of the system from TUK, LLC.

§4. Transfer, lease and sale

The Commission granted authority for TUK, LLC to sell to Seven Springs Sewer & Water LLC a sewer system for residential customers in Jefferson County, Missouri.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 6th day of April, 2022.

In the Matter of the Application of TUK, LLC to Sell its Sewer Assets to Seven Springs Sewer & Water LLC	)))	**File No. SM-2022-0131**

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

Issue Date: April 6, 2022 Effective Date: May 6, 2022

On November 10, 2021, TUK, LLC (TUK) and Seven Springs Sewer & Water LLC (Seven Springs) submitted a joint *Application and Motion for Waiver* (Application) to the Commission. In their Application, TUK requests Commission authority to sell, and Seven Springs requests authority to acquire, pursuant to a sale agreement, all or substantially all of the assets of TUK. The Application also includes a request to transfer the applicable certificate of convenience and necessity (CCN) from TUK to Seven Springs, or alternatively, grant a new CCN to Seven Springs for the service area. The applicants also ask the Commission to waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017.

The Commission issued notice of the application and set a deadline for the filing of applications to intervene, but no parties sought to intervene. The Commission ordered its staff (Staff) to file a recommendation as to the application and Staff did so on March 16, 2022, recommending that the Commission approve the sale, subject to 13 conditions. Staff also recommends that the Commission grant Seven Springs a new CCN to provide sewer service in the territory currently served by TUK, and that TUK's

CCN be cancelled. On March 22, 2022, TUK and Seven Springs jointly filed a *Response to Staff Recommendation* in which they stated that they did not object to the 13 conditions recommended by Staff. No other responses or objections to Staff's recommendation were filed.

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

TUK provides retail sewer utility services in Jefferson County, Missouri, to approximately 26 residential customers and one mobile home park. TUK is a certificated sewer corporation, subject to the Commission's jurisdiction.[2]

Seven Springs is a limited liability company formed on October 26, 2021, whose principal, Lawrence Harrison, recently purchased the water system (unregulated), mobile home park, and three duplex units that account for over half of the customers currently served by TUK's sewer system.

As a regulated utility, TUK must obtain the Commission's authorization before selling its assets.[3] In evaluating the proposed sale by TUK, the Commission may not withhold approval of the sale unless the sale would be detrimental to the public interest.[4]

Mr. Harrison has never owned a regulated utility. However, Seven Springs intends to utilize the current contract operator for plant operations. Seven Springs also intends to continue to utilize the current office manager/bookkeeper, who is a full-time employee of

[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), RSMo 2016; TUK was granted a CCN in File No. WA-2015-0169.
[3] Section 393.190, RSMo 2016.
[4] *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980) (citing *City of St. Louis v. Public Serv. Comm'n of Missouri,* 73 S.W. 2d 393, 400 (Mo banc 1934)).

the mobile home park, to handle customer inquiries, produce customer bills, and post payments. TUK currently has an office in the city of Eureka just north of the service area of the sewer system that Seven Springs intends to continue to utilize.

Seven Springs is purchasing TUK with equity in the form of a $25,000 cash payment at closing, and will have no debt. The purchase price is less than the system's net book value of $31,192 calculated by Staff, and Seven Springs is not requesting recovery of any acquisition premium. By owning over half of the sewer system customer base, Mr. Harrison has the largest single interest in maintaining the sewer system and providing safe and adequate service. Staff's position is that Seven Springs has the technical, managerial, and financial capacities to acquire and operate the TUK sewer system.

Seven Springs proposes to adopt the existing tariffs and rates of TUK. Staff supports that proposal. Staff recommends the use of the depreciation rates ordered by the Commission in TUK's CCN case, File No. WA-2015-0169, and Seven Springs agrees to adopt those rates. In addition, the transaction should not have any material effect on the tax revenues of any political subdivision where TUK's sewer system is located.

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."[5] 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

[5] Section 393.170.3, RSMo 2016.

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] These criteria are also sometimes known as the Tartan Factors.[7]

There is a need for the service because current TUK customers both desire and need sewer service, and there is a need for repairs to the system as proposed by Seven Springs. By continuing to utilize the current contract operator, office manager/bookkeeper, and office, Seven Springs is qualified to provide the service. By its cash purchase of the system, with no debt, Seven Springs demonstrates the financial ability to acquire the system. Mr. Harrison, the principal of Seven Springs, is the largest sewer consumer and has the largest single interest in maintaining the sewer system and continuing safe and adequate service. In addition, Mr. Harrison has over $250,000 of equity in the acquired properties, and has planned improvements and financial commitments to ensure his properties remain in good working order. Therefore, Seven Springs has also demonstrated the financial ability to provide continued service. The proposed transaction is economically feasible, as no rate change is requested. The proposed transaction is highly important to continuing safe and adequate sewer service to these captive customers, and will provide stability and continuity of service to those customers, and therefore promotes the public interest.

[6] The factors have also been referred to as the “Tartan Factors” or the “Tartan Energy Criteria.” See Report and Order, *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).
[7] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

The Commission finds that Seven Springs has the technical, managerial, and financial capacities to acquire and operate the sewer system it wishes to purchase from TUK. The Commission finds that the factors for granting a CCN to Seven Springs have been satisfied and that it is in the public interest for Seven Springs to provide sewer service to the service area currently served by TUK. The Commission will authorize the transfer of assets and grant Seven Springs a CCN to provide sewer service within the current TUK service area, subject to the conditions listed in the *Memorandum* attached to the March 16th *Staff Recommendation*.

Seven Springs and TUK also seek a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). Seven Springs and TUK certify that neither has had communication with the Office of the Commission regarding any substantive issue likely to be in this case during the 150 days prior to the filing of their application. The Commission finds that Seven Springs and TUK have demonstrated good cause for the waiver of the 60-day notice requirement.

THE COMMISSION ORDERS THAT:

1. Seven Springs and TUK are granted a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

2. The Commission grants the application of TUK for authority to sell to Seven Springs the assets described in the Contract for Purchase and Sale attached to the joint application filed by Seven Springs and TUK on November 10, 2021.

3. Seven Springs is granted a Certificate of Convenience and Necessity to install, acquire, build, construct, own, operate, control, manage, and maintain a sewer system in the area currently served by TUK.

4. Upon closing of the asset transfer, TUK is authorized to cease providing service and Seven Springs is authorized to begin providing service.

5. Seven Springs shall adopt the currently effective tariffs of TUK.

6. The transactions are subject to the following conditions:

A. Seven Springs shall file notice to adopt the TUK sewer tariffs as P.S.C. MO No. 1 to become effective before closing on the assets;

B. Seven Springs shall file notice in the Commission's Electronic Filing and Information System (EFIS) of closing on the assets within five days after such closing;

C. If closing on the sewer assets does not take place within 30 days following the effective date of the Commission's order approving such, Seven Springs shall submit a status report within five days after this 30-day period regarding the status of the closing, and additional status reports within five days after each additional 30-day period, until closing takes place, or until Seven Springs determines that the transfer of the assets will not occur;[8]

D. If Seven Springs determines that a transfer of the assets will not occur, Seven Springs shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Seven Springs shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to TUK's service area in its sewer tariff, and rate and charges tariff sheets applicable to customers in the service area in the sewer tariff;

E. Seven Springs shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts;

F. Seven Springs shall adopt the depreciation rates ordered in File No. WA-2015-0169 and as outlined in Attachment A of the Staff *Memorandum* attached to the *Staff Recommendation* filed on March 16, 2022;

G. Seven Springs shall file in EFIS monthly financial reports for the first two years following the closing on the sewer assets;

[8] The Staff *Memorandum* attached to the *Staff Recommendation* filed on March 16, 2022, contains the language, ". . . or until Seven Springs determines that the transfer of the assets will occur." In response to an inquiry from the presiding judge, the parties verified that the language should be, ". . . will *not* occur."

H. Seven Springs shall distribute to its customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within 30 days of closing on the assets;

I. Seven Springs shall file in EFIS, within ten days after closing on the assets, an example of its actual communication with the sewer customers of the acquired company regarding its acquisition and operations of the sewer system assets, and how customers may reach Seven Springs;

J. Seven Springs shall file in EFIS a sample of five billing statements from the first month's billing for Seven Springs within ten days after the initial bill;

K. Seven Springs shall maintain timesheets for the office manager/bookkeeper tracking the activities and time attributable to functions performed for Seven Springs; and

L. Seven Springs shall file in EFIS in this case outlining completion of the above-recommended customer brochure, communications, and billing for Seven Springs within ten days after such communications and notifications.

7. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

8. This order shall be effective on May 6, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Seyer, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Greg Stiens, Complainant,	)	
v.	)	**File No. GC-2021-0395**
The Empire District Gas Company d/b/a Liberty, Respondent.	)	

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§6. Weight, effect and sufficiency

Neither Mr. Stiens nor Liberty are responsible for any delay caused by the postal service. Mr. Stiens' complaint attempts to hold Liberty responsible for an apparent postal delay. It is understandable that Mr. Stiens is upset at having received a shut-off notice, but the Commission finds no credence in his argument that his reputation has been tarnished "forever."

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Greg Stiens, Complainant, v. The Empire District Gas Company d/b/a Liberty, Respondent.	))))))))	**File No. GC-2021-0395**

REPORT AND ORDER

Issue Date: April 13, 2022

Effective Date: May 3, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Greg Stiens, Complainant,	)	
v.	)	**File No. GC-2021-0395**
The Empire District Gas Company d/b/a Liberty, Respondent.	)	

REPORT AND ORDER

I. Procedural History

On April 26, 2021, Greg Stiens filed a complaint with the Commission against The Empire District Gas Company d/b/a Liberty. Mr. Stiens alleges that Liberty sent him a shut-off notice for failing to pay his gas bill after he had already paid it. Mr. Stiens' complaint alleges that this is a violation of Commission Rule 20 CSR 4240-13.025, concerning billing adjustments. Mr. Stiens alleges that Liberty overcharged him for his March 19, 2021, gas bill. Mr. Stiens has also questioned whether Liberty's rates are just and reasonable. Mr. Stiens has requested $100.00 for receiving the shut-off notice and a $30.00 credit for the overcharge. Because the amount in dispute is less than $3,000, Mr. Stiens' complaint is being addressed under the small formal complaint procedures contained in Commission Rule 20 CSR 4240-2.070(15).

The Commission issued notice of the complaint, directed Liberty to file an answer, and directed the Staff of the Commission (Staff) to file a report on the complaint. On June 10, 2021, Liberty filed an answer to Mr. Stiens' complaint along with a motion to dismiss.

Staff filed its report and memorandum detailing its investigation and analysis on July 15, 2021. Staff concluded that Liberty did not violate any applicable statutes, Commission rules, or Commission-approved Company tariffs related to this Complaint. However, Staff recommended that Liberty make modifications to its shut-off notice to prevent future confusion by its customers. Staff requested that the Commission issue an order finding no violations by Liberty, but directing Liberty to modify its shut-off notices.

The Commission issued a procedural schedule scheduling a WebEx evidentiary hearing for October 14, 2021. Pursuant to that schedule, Staff filed a joint list of issues and stipulated facts on behalf of the parties that set forth a single issue for the Commission's determination: Did Liberty violate any applicable statutes, Commission rules, or Commission approved tariffs related to this Complaint?

At the October 14, 2021, WebEx evidentiary hearing Mr. Stiens asked if he could present his case in-person and not via WebEx. The presiding officer granted Mr. Stiens' request and rescheduled the hearing to December 16, 2021, at the Maryville Missouri City Hall, City Council Chambers.[1]

At the evidentiary hearing, the Commission heard the testimony of four witnesses and received four exhibits onto the record. Angie Simkin, Liberty Central Region customer service manager; and John Harrison, Director of Customer Experience; testified for Liberty; and Scott Glasgow, Senior Research Data Analyst for the Customer Experience Department; testified for Staff. Mr. Stiens testified on his own behalf.

The Commission initially ordered post-hearing briefs, but upon reconsideration, issued an order making post-hearing briefs optional. Mr. Stiens submitted a post-hearing

[1] Commission Rule 20 CSR 4240-2.070(15)(E), requires that, unless otherwise agreed, any hearing shall be held in the county where service was rendered, or within 30 miles of where service was rendered.

brief. No other parties submitted briefs. On January 21, 2022, the case was deemed submitted for the Commission's determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "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."

Liberty's Motion to Dismiss

Liberty's motion to dismiss requested that the Commission dismiss Mr. Stiens' complaint for failure to state a claim to which the Commission could grant relief. Liberty's motion states that Mr. Stiens' complaint does not point to any statute, tariff, Commission rule or order that was allegedly violated by Liberty under the facts presented by Mr. Stiens. The Office of the Public Counsel (OPC) filed a pleading opposing Liberty's motion to dismiss, pointing out that Mr. Stiens did, in fact, cite to the Commission's billing rule. Additionally, OPC says that even if a complainant does not cite to a particular law or tariff, residential customers should still have their cases heard when a complaint explains in practical terms the basis for the complaint. OPC's Motion asserts that complainants are entitled to file complaints without an attorney's understanding of the applicable laws, orders, or tariffs. The Commission agrees with OPC. Mr. Stiens has described a sufficient basis for his complaint and the motion to dismiss will be overruled.

Notice of Agreement

On August 29, 2021, Liberty filed a Notice of Agreement. The Notice of Agreement indicated that Liberty agreed with Staff's recommendation that Liberty make modifications to its shut-off notice. The Notice of Agreement stated that Liberty was in the process of implementing Staff's recommendation. Liberty's shut-off notice language will provide "Disregard if this past due amount has already been paid" instead of "Disregard if payment

made after [date].” Liberty’s motion also requested that the Commission issue an order dismissing Mr. Stiens’ complaint. The Commission directed Mr. Stiens to respond to Liberty’s Notice of Agreement, and Mr. Stiens responded that Liberty’s Notice of Agreement did not resolve his issues with Liberty.

Recommended Report and Order

The Presiding Officer issued a Recommended Report and Order on March 23, 2022. Pursuant to 20 CSR 4240-2.070(15)(H), the parties were given ten days to file comments supporting or opposing the recommended order. Staff filed a recommendation to correct two typographical errors. Mr. Stiens filed an out-of-time *Comments, Facts, Opposition to Commission’s Order, Findings and Suggestions* on April 8, 2022. Mr. Stiens disagrees with the Commission’s interpretation of the evidence and the Commission’s decision. Mr. Stiens provided no additional argument sufficient to convince the Commission it incorrectly decided this complaint. Accordingly, no changes were made to this order as a result of Mr. Stiens filing.

Confidential Information

Customer specific information is confidential under Commission Rule 20 CSR 4240-2.135(2); however, the Commission may waive this provision under Commission Rule 20 CSR 4240-2.135(19) for good cause. Good cause exists to waive confidentiality as to Mr. Stiens’ billing information and gas usage because the Commission would be unable to write findings of fact or a decision that did not use some of Mr. Stiens’ customer specific information, and because Mr. Stiens waived the confidentiality of relevant information at the evidentiary hearing. The confidential information disclosed in this Report and Order is the minimal amount necessary to support the Commission’s decision.

II. Findings of Fact and Conclusions of Law

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

On October 1, 2021, Staff filed a list of stipulated facts on behalf of the parties. The Commission finds the undisputed facts in the stipulation to be conclusively established. Those undisputed facts are incorporated where necessary.

The Commission takes official notice of Mr. Stiens' complaint filed April 26, 2021.

Findings of Fact

1. Mr. Steins is a customer of The Empire District Gas Company d/b/a Liberty. Mr. Steins resides within Liberty's service area.[2]

2. Payment for Liberty gas utility bills is due 21 days after they are issued.[3] Mr. Steins' March 19, 2021, billing statement was due April 9, 2021.[4]

3. Mr. Stiens mailed a check to Liberty as payment for his March billing statement on or around April 4, 2021.[5]

4. Mr. Stiens acknowledged that the post office has had problems delivering mail.[6]

[2] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[3] Transcript, p. 79.
[4] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[5] Exhibit 2, Check number 716, and transcript, p. 49.
[6] Transcript, p. 50.

5. Liberty's payment processing center is J. P. Morgan and is located in Dallas, Texas. Liberty employees a third-party payment processer to process mailed payments because they are more accurate and expeditious than processing payments at Liberty's office.[7]

6. Liberty allows a two-day grace period from a bill's due date before issuing a disconnect notice. A disconnect notice is automatically generated if payment is not posted to a customer's account.[8] Liberty generated a shut-off notice on April 12, 2021.[9]

7. Liberty received Mr. Stiens' payment in their lockbox on April 12, 2021.[10]

8. Liberty processed Mr. Steins' payment for his March 19, 2021, billing statement on April 13, 2021.[11]

9. Liberty mailed Mr. Stiens a shut-off notice on April 13, 2021.[12] That notice stated that Mr. Stiens' gas service could be shut off on or after April 23, 2021.[13]

10. Mr. Stiens felt upset and insulted at having received a shut-off notice.[14]

11. Mr. Steins credibly testified that he has never received a shut-off notice prior to the one sent April 13, 2021.[15]

12. Mr. Stiens contacted Liberty's customer service center on April 19, 2021.[16]

13. Mr. Stiens requested monetary compensation for having received the shut-off notice.[17]

[7] Transcript, p. 81.
[8] Transcript, p. 79.
[9] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[10] Transcript, p. 86-87.
[11] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[12] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[13] Exhibit 1, Shut-off Notice
[14] Trancript, p. 53, 59, and Exhibit 100, Recorded Call.
[15] Transcript, p. 54.
[16] Transcript, p. 76.
[17] Transcript, p. 59, and Exhibit 100, Recorded Call.

14. Mr. Stiens talked to three Liberty customer service employees, and was transferred to a different employee twice at his request.[18]

15. All three customer service employees were polite and professional when conversing with Mr. Stiens.[19]

16. Customer service explained to Mr. Stiens that he was not charged a late fee, and that the late received payment would not be reported to a credit agency.[20]

17. Customer service explained to Mr. Stiens that he could disregard the shut-off notice as he had already made payment and Liberty had processed that payment.[21]

18. Mr. Steins' gas service was never shut off.[22]

19. Mr. Steins was not charged a late fee or other fee related to the incident.[23]

20. Mr. Steins was not reported to a credit agency in relation to the incident.[24]

21. Mr. Steins' March 19, 2021, gas bill was $97.36, which was for gas usage of 146 cubic feet in comparison to 110 cubic feet in the same time period in the prior year.[25]

22. Staff compared Mr. Stiens' March 2020 gas bill to his March 2021 gas bill. Temperatures for March 2021 were 25.3 percent colder than March 2020. Mr. Stiens' gas usage increased 32.7 percent, but the total bill amount only increased 20.8 percent to $97.36.[26]

[18] Transcript, p. 77, and Exhibit 100, Recorded Call.
[19] Transcript, p. 77, and Exhibit 100, Recorded Call.
[20] Transcript, p. 61-62.
[21] Transcript, p. 94, and Exhibit 100, Recorded Call.
[22] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[23] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[24] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[25] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021, and Exhibit 200, Staff Report and Memorandum.
[26] Exhibit 200, Staff Report and Memorandum.

23. There is no evidence that Liberty overbilled Mr. Stiens for March 2021 gas service.[27]

24. Staff did not find any violations by Liberty of any applicable statutes, Commission rules, or Commission-approved tariffs related to this Complaint.[28]

25. Staff recommended in its Report that Liberty modify the language it uses in its shut-off notices, which Liberty agreed to modify.[29]

26. Mr. Stiens questions whether Liberty's rates are just and reasonable.[30]

Conclusions of Law

A. Liberty is a Missouri corporation and a "gas corporation" and "public utility" as defined by Section 386.020, RSMo, and is authorized to provide gas service to portions of Missouri.

B. Section 386.390.1, RSMo, states that a person may file a complaint against a utility, regulated by this Commission, setting forth violations of any law, rule or order of the Commission. Therefore, the Commission has jurisdiction over this complaint.

C. Section 386.390.1 RSMo, provides that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or

[27] Exhibit 200, Staff Report and Memorandum.
[28] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[29] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[30] Transcript, p. 39, and Complainant's Brief, January 18, 2022, p. 4.

purchasers, or prospective consumers or purchasers, of such gas service.

D. Commission Rule 20 CSR 4240-13.050(1) provides that service may be discontinued for nonpayment of an undisputed delinquent charge.[31]

E. Commission Rule 20 CSR 4240-13.050(5) states that, "An electric, gas, or water utility shall not discontinue residential service pursuant to section (1) unless written notice by first class mail is sent to the customer at least ten (10) days prior to the date of the proposed discontinuance."[32]

F. Commission Rule 20 CSR 4240-13.025 states that, "This rule establishes the requirements for making billing adjustments in the event of an overcharge or an undercharge."[33]

G. Complainant bears the burden of proof to show by a preponderance of evidence that Liberty has violated a law subject to the Commission's authority, a Commission rule, or an order of the Commission.[34]

H. The Commission has no authority to award Mr. Stiens a monetary judgment.[35]

I. Mr. Stiens does not satisfy the statutory requirements to challenge the just and reasonableness of Liberty's rates in this proceeding.[36]

[31] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[32] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[33] Joint Statement of the Issues and Stipulated Facts, filed October 1, 2021.
[34] *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo. App. 2003). Stating that in cases "complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, . . . the burden of proof at hearing rests with the complainant."
[35] *State ex rel. GS Techs. Operating Co. v. PSC of Mo*., 116 S.W.3d 680, 696 (Mo. App. 2003).
[36] Section 386.390.1 RSMo.

III. Decision

Mr. Stiens alleges that Liberty sent him a disconnect notice for failing to pay his gas bill after he had already paid it in violation of Commission Rule 20 CSR 4240-13.025, Billing Adjustments. Mr. Stiens' complaint states that Liberty knew (or should have known) this was an error. He states that Liberty failed to collect all information before they sent out a shutoff notice, and that they allowed only 14 days from the bill's due date before shutting off service.

Mr. Stiens has also questioned whether Liberty's rates are just and reasonable. The Commission will not address the justness and reasonableness of Liberty's rates in this Report and Order because Mr. Stiens does not satisfy the statutory requirements to make that allegation in this proceeding.

Commission Rule 20 CSR 4240-13.025 requires utilities to make billing adjustments for billing errors. Mr. Stiens alleged that he thought his bill was $30 higher than it should be, but presented no evidence that he was overbilled for service. Mr. Stiens' gas usage for March 2021 was 32.7 percent higher than March 2020, but his bill only increased 20.8 percent. The Commission finds no evidence that Mr. Stiens was overbilled for his March 2021 gas service. Therefore, no billing error has occurred that would require a billing adjustment.

Mr. Stiens' bill due date for service provided in March was April 9, 2021. The shut-off notice was mailed on April 13, 2021, and stated that Mr. Stiens' gas service could be shut off on or after April 23, 2021. Mr. Stiens' complaint correctly states that Liberty allowed only 14 days from the bills due date until his service would be shut off. However, Mr. Stiens' complaint incorrectly states that this is less than the time allowed by the Commission. The Commission's Rule requires that a utility cannot discontinue unless

written notice by first class mail is sent to the customer at least ten days prior to shut off of service. Liberty provided notice ten days prior to an alleged shut off date. There is no statute, Commission rule, or Liberty tariff provision that requires Liberty to wait to send a shut-off notice within a certain number of days after a bill's due date. Liberty could have lawfully sent a shut-off notice any time after April 9, 2021. Liberty's company policy is to allow a two day grace period after a bill's due date before sending a shut-off notice.

Mr. Stiens is upset because he received a shut-off notice after having timely mailed payment for his March utility bill. He has also acknowledged that the post office has had difficulties getting mail delivered. Mr. Stiens mailed payment for his March bill on April 4, 2021, and Liberty processed it on April 13, 2021. Neither Mr. Stiens nor Liberty are responsible for any delay caused by the postal service. Mr. Stiens' complaint attempts to hold Liberty responsible for an apparent postal delay. It is understandable that Mr. Stiens is upset at having received a shut-off notice, but the Commission finds no credence in his argument that his reputation has been tarnished "forever."[37] Mr. Stiens took appropriate action by contacting Liberty customer service when he received the shut-off notice. Liberty customer service repeatedly assured Mr. Stiens that he could disregard any shut-off notice and that Liberty received payment. Liberty customer service also assured Mr. Stiens that his receipt of a shut-off notice would not be reported to any credit agency. At all times Liberty customer service was polite and professional with Mr. Stiens. Liberty transferred Mr. Stiens to a higher level customer service representative two times at his request. Mr. Stiens repeatedly asked each customer service representative to be financially reimbursed for the insult of having received a shut-off

[37] Complainant's Brief, January 18, 2022, p.7.

notice. Liberty was under no obligation to provide Mr. Stiens with a billing credit because no billing error had occurred.

The only issue before the Commission in this complaint is whether Liberty violated any applicable statutes, Commission rules, or Commission approved tariffs related to this Complaint. Mr. Stiens has failed to produce evidence sufficient to satisfy his burden to demonstrate that Liberty has violated any statute, rule, or tariff provision. Therefore, the Commission will deny his complaint. Any party wishing to request a rehearing or reconsideration shall file applications for the requested relief prior to the effective date of this Report and Order.

THE COMMISSION ORDERS THAT:

1. Mr. Stiens' complaint is denied.
2. Liberty's motion to dismiss is overruled.
3. This Report and Order shall become effective on May 3, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for Authority to Acquire Certain Water and Sewer Assets and for Certificates of Convenience and Necessity	)))))	**File No. WA-2021-0425** **File No. SA-2021-0426**

ORDER CORRECTING THE COMMISSION'S ORDER GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY NUNC PRO TUNC

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

The Spring Branch water system was included in the Staff of the Commission's recommendation, and is appropriately referenced elsewhere in the ordered paragraphs. There is no dispute regarding the Commission's intent to grant a Certificate of Convenience and Necessity to Confluence Rivers to acquire the Spring Branch system. Accordingly, the Commission will correct the ordered paragraph nunc pro tunc.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of April, 2022.

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for Authority to Acquire Certain Water and Sewer Assets and for Certificates of Convenience and Necessity	)))))	**File No. WA-2021-0425** **File No. SA-2021-0426**

ORDER CORRECTING THE COMMISSION'S ORDER GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY NUNC PRO TUNC

Issue Date: April 21, 2022 Effective Date: April 21, 2022

In reviewing Confluence Rivers' case records to verify that the utilities and tariffs discussed in the application and order were properly reflected in the Commission's electronic filing system, it came to the Commission's attention that there was a clerical error in ordered paragraph 4 of the Commission's order granting a certificate of convenience and necessity (CCN).

Ordered paragraph 4 of the Commission's *Order Granting Certificate of Convenience and Necessity*, issued on December 15, 2021, erroneously includes the Cedar Green regulated water and sewer systems. Ordered paragraph 3 already grants Confluence Rivers Utility Operating Company (Confluence Rivers) a CCN to acquire and operate the regulated water and sewer assets of Cedar Green.

Ordered paragraph 4 should instead include the unregulated Spring Branch water system. The Spring Branch water system was included in the Staff of the Commission's recommendation, and is appropriately referenced elsewhere in the ordered paragraphs. There is no dispute regarding the Commission's intent to grant a CCN to Confluence

Rivers to acquire the Spring Branch system. Accordingly, the Commission will correct the ordered paragraph nunc pro tunc. Ordered paragraph 4 is corrected to read as follows:

4. Confluence Rivers is authorized to acquire, and is granted a CCN to own, install, construct, operate, control, manage, and maintain the unregulated water and sewer assets of The Missing Well, Shelton Estates, Clemstone, Prairie Heights, and Spring Branch.

THE COMMISSION ORDERS THAT:

1. The Commission's *Order Granting Certificate of Convenience and Necessity*, issued order, issued December 15, 2021, is corrected as indicated in the body of this order.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 2 Energy Efficiency Programs of Evergy Metro, Inc. d/b/a Evergy Missouri Metro	)))))	**File No. EO-2020-0227**

REPORT AND ORDER

ELECTRIC

§13.1. Energy Efficiency
The Commission found that imprudent energy costs that are recovered through a Fuel Adjustment Clause (FAC) should be adjusted in the FAC, and imprudent Missouri Energy Efficiency Investment Act (MEEIA) costs that are recovered through a Demand-Side Programs Investment Mechanisms (DSIM) should be adjusted through the DSIM.

§13.1. Energy Efficiency
The Commission found that Evergy acted imprudently in giving away thermostats to customers who did not ultimately participate in the program where the tariff restricted the thermostats to “participants”.

§13.1. Energy Efficiency
The Commission found prudent Evergy’s actions in controlling the program’s budget by restricting free programmable thermostats to those installed via a certain method.

§13.1. Energy Efficiency
Concerns about the incentive levels to be paid in programs needed to be raised during the authorization process and not in a prudency review.

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers
The Commission is foreclosed from issuing orders that would have a general applicability. A proposed presumed prudence limit requires a rulemaking procedure and should be prospective.

§4. Presumption and burden of proof
§9. Particular kinds of evidence generally
§26. Burden of proof
In order to disallow an incurred cost on the basis of imprudence, the Commission must find both that the utility acted imprudently, and that the imprudence resulted in harm to the utility's ratepayers.

§4. Presumption and burden of proof
§9. Particular kinds of evidence generally
§26. Burden of proof
The Commission found that Evergy acted imprudently in giving away thermostats to customers who did not ultimately participate in the program where the tariff restricted the thermostats to "participants".

§4. Presumption and burden of proof
§9. Particular kinds of evidence generally
§26. Burden of proof
The Commission found prudent Evergy's actions in controlling the program's budget by restricting free programmable thermostats to those installed via a certain method.

§6. Weight, effect and sufficiency
§25. Pleadings and exhibits
Concerns about the incentive levels to be paid in programs needed to be raised during the authorization process and not in a prudency review.

RATES

§101. Fuel clauses
§104. Electric and power
§105. Demand, load and related factors
§118. Method of allocating costs
§119. Rate design, class cost of service for electric utilities
The Commission found that imprudent energy costs that are recovered through a Fuel Adjustment Clause (FAC) should be adjusted in the FAC, and imprudent Missouri Energy Efficiency Investment Act (MEEIA) costs that are recovered through a Demand-Side Programs Investment Mechanisms (DSIM) should be adjusted through the DSIM.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 2 Energy Efficiency Programs of Evergy Metro, Inc. d/b/a Evergy Missouri Metro	)))))	**File No. EO-2020-0227**

REPORT AND ORDER

Issue Date: May 4, 2022

Effective Date: June 3, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Second Prudence Review of the Missouri Energy Efficiency Investment Act (MEEIA) Cycle 2 Energy Efficiency Programs of Evergy Metro, Inc. d/b/a Evergy Missouri Metro	)))))	**File No. EO-2020-0227**

APPEARANCES

Appearing for Evergy Missouri Metro and Evergy Missouri West

Roger W. Steiner, Evergy, Inc., 1200 Main Street, Kansas City, Missouri 64105

Joshua Harden, Collins & Jones, 1010 W. Foxwood Drive, Raymore, Missouri 64083

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

Appearing for the Office of the Public Counsel

Caleb Hall, and **Marc D. Poston**, Governor Office Building, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102

Appearing for the Staff of the Missouri Public Service Commission

Jeff Keevil, Governor Office Building, 200 Madison Street, Suite 800, Jefferson City, Missouri 65102

Senior Regulatory Law Judge: Charles Hatcher

REPORT AND ORDER

I. Procedural History

This case involves the Second Prudence Reviews of the Cycle 2 costs related to the Missouri Energy Efficiency Investment Act (MEEIA) tariff provisions for both Evergy Metro, Inc. d/b/a Evergy Missouri Metro (Evergy Metro) and of Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy West) (collectively, "Evergy").

For Evergy Metro, the Staff of the Commission (Staff) filed its *Notice of Start of Second Prudence Review of Cycle 2 Energy Efficiency Programs* in File No. EO-2020-0227 on February 3, 2020, advising that it intended to examine Evergy Metro's Cycle 2 Demand-Side Investment Mechanism (DSIM) for the period April 1, 2018, through December 31, 2019. Staff filed a separate notice in File No. EO-2020--0228 for Evergy West auditing the same time period. On June 30, 2020, Staff filed reports in each file setting out the findings of its examinations. On August 5, 2020, the Commission consolidated the two cases, with EO-2020-0227 as the lead case.

Based on its review, Staff recommended the Commission make several prudence-related adjustments to Evergy's DSIM. Staff raised concerns about how Evergy implemented its demand-response programs, and whether Evergy could have used the programs more effectively. The Office of the Public Counsel (OPC) also cited a concern regarding the ratio of incentive to non-incentive costs included in Evergy's energy efficiency spending. On July 7, 2020, Evergy requested a hearing. The Commission set a procedural schedule including the filing of written testimony, a list of issues to be decided by the Commission, and an evidentiary hearing.

Prior to the evidentiary hearing, the parties reached settlement on some issues. Not settled were several of Staff's concerns regarding the demand-response programs and OPC's concern about the incentive to non-incentive cost ratio. Ultimately, the parties presented seven issues for Commission resolution, as follows:

> 1. Are Staff's and OPC's proposed prudence adjustments within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093?
>
> 2. Did Evergy act imprudently in its implementation of the Residential Programmable Thermostat program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?
>
> 3. Did Evergy act imprudently in its implementation of its Demand Response Incentive Program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?
>
> 4. Did Evergy act imprudently by not calling more demand-response events for the purpose of reducing Southwest Power Pool (SPP) fees? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?
>
> 5. Did Evergy act imprudently by not calling more demand-response events for the purpose of reducing the costs associated with day-ahead locational marginal prices? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?
>
> 6. Did Evergy Missouri Metro act imprudently by not entering into more bi-lateral capacity contracts? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?
>
> 7. Did Evergy act imprudently by virtue of its MEEIA programs' incentive to non-incentive costs ratios?

An evidentiary hearing was held on April 21-22, 2021. The parties filed initial briefs on June 4, 2021, and reply briefs on June 25, 2021. Due to COVID-19 precautions, the hearing was held via the WebEx telecommunications and video web service.

II. General Findings of Fact

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

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

1. Evergy Metro and Evergy West are Missouri electrical corporations as defined by Section 386.020(15), RSMo (Supp. 2021), and are authorized to provide electric service to portions of Missouri.[1]

2. The OPC is a party to this case pursuant to Section 386.710(2), RSMo (2016),[2] and by Commission rule 20 CSR 4240-2.010(10).

3. Staff is a party to all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.[3] Staff participated in this proceeding.

4. The Missouri Energy Efficiency Investment Act (MEEIA) authorizes the use of demand-side programs.[4]

5. Through Evergy's DSIM, Evergy customers have paid for the companies' demand-response programs.[5]

6. Demand response programs financially incentivize ratepayers to participate in the program with the expectation that those participants will reduce a specified portion

[1] List of Issues, Order of Witnesses, Order of Cross-Examination, and Joint Stipulation of Facts, filed October 26, 2021, Joint Stipulated Facts, para. 1.
[2] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[3] 20 CSR 4240-2.010(10) and (21) and 2.040(1).
[4] Section 393.1075 RSMo (Supp. 2021).
[5] Ex. 104, Luebbert Direct, p. 6.

of their load at specific times identified by the utility. Those times specified by the utility can be characterized as "demand-response events" or "events."[6]

7. In a combined order, the Commission authorized Cycle 2 of Evergy Metro's DSIM rider in File No. EO-2015-0240,[7] and Cycle 2 of Evergy West's DSIM rider in File No. EO-2015-0241.[8] The combined order established Evergy's Cycle 2 as taking place from April 1, 2018, through March 31, 2019.[9]

8. The Commission extended its authorization for Evergy's Cycle 2 in File No. EO-2019-0132.[10] The extended time period of Cycle 2 was April 1, 2019, through December 31, 2019.[11]

9. This is Staff's second prudence review of Evergy's DSIM Cycle 2. The prudence review covers the Cycle 2 time period, including the extension, of April 1, 2018, though December 31, 2019.[12]

III. General Conclusions of Law

A. Subsection 386.020(15), RSMo (Supp. 2021) defines "electrical corporation" as including:

> every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, . . . owning, operating, controlling or managing any electric plant . . . .

[6] Ex. 104, Luebbert Direct, p. 4.
[7] EO-2015-0240, *Order Approving Stipulation and Agreement*, effective October 29, 2017. Evergy Metro is f/k/a Kansas City Power & Light Company.
[8] EO-2015-0241, *Order Approving Stipulation and Agreement*, effective October 29, 2017. Evergy West is f/k/a KCP&L Greater Missouri Operations Company.
[9] Ex. 101, Schedule BJF-d3, p. 1, and BJF-d5, p. 1.
[10] Ex. 2, Order Approving Stipulation and Agreement.
[11] Ex. 101, Schedule BJF-d3, p. 2, and BJF-d5, p. 2.
[12] Ex. 101, Schedule BJF-d3, p. 4, and BJF-d5, p. 4.

B. Section 386.266, RSMo (Supp. 2021) authorizes the Commission to allow electrical corporations, such as Evergy Metro and Evergy West, to utilize periodic rate adjustment mechanisms, such as a Fuel Adjustment Clause (FAC), to reflect increases and decreases in prudently incurred fuel and purchased-power costs, including transportation.

C. Section 393.1075, RSMo (Supp. 2021) authorizes the Commission to allow an electrical corporation, such as Evergy Metro and Evergy West, to implement demand-side programs.

D. Subsection 393.1075.3 (Supp. 2021) sets forth the policy of Missouri to value demand-side investments equal to traditional investments in supply and delivery infrastructure, and to allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs.

E. Subsection 393.1075.3 (Supp. 2021) directs the Commission to ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances customers' incentives to use energy more efficiently.

F. Subsection 393.1075.4 (Supp. 2021) restricts recovery for demand-side programs to those resulting in energy or demand savings, and which are also beneficial to all customers in the customer class in which the programs are proposed, regardless of whether the programs are utilized by all customers.

G. Demand-side program means any program conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including, but not limited to, energy efficiency measures, load management,

demand-response, and interruptible or curtailable load, but not including deprivation of service or low-income weatherization.[13]

H. A DSIM is the Commission-approved rate mechanism designed to encourage a utility's investment in demand-side programs under MEEIA. Under the Commission's regulations, a DSIM may include components to recover the costs of demand-side programs, along with amounts reflecting lost sales margins as a result of demand-side programs and any performance incentives or earnings opportunities. The DSIM is collected through a periodically adjusted line item on customer bills.[14]

I. Commission Rule 20 CSR 4240-20.093(11) requires that the Staff conduct prudence reviews of an electric utility's costs recovered through its DSIM no less frequently than every twenty-four months.

J. In determining whether a utility's conduct was prudent, the Commission will judge that conduct by:

> asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, [the Commission's] responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[15]

K. The Missouri Supreme Court further affirmed the Commission's rationale in stating,

> The PSC ordinarily applies a presumption of prudence in determining whether a utility reasonably incurred its expenses. This presumption of prudence will not survive a showing of inefficiency or improvidence that creates serious doubt as to the prudence of an expenditure. If such a showing is made, the presumption drops out and the applicant

[13] 20 CSR 4240-20.092(1)(M).
[14] 20 CSR 4240-20.092(1)(N) and (Q).
[15] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Com'n,* 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

> has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.[16]

L. It would be inconsistent with the statutory authority provided by Section 393.130.1 for the Commission to make a decision on the recoverability of costs based upon a prudency analysis without reference to the detrimental impact of those practices to the ratepayers.[17]

M. Subsection 393.150.2, RSMo (2016) states that the utility bears the burden of proving that a requested rate is just and reasonable.

N. Although the utility always bears the burden of proving that a proposed rate increase is just and reasonable, the Commission will, in the absence of adequate contrary evidence, presume that a utility's costs incurred through arm's-length transactions were prudently incurred. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.[18]

IV. Findings of Fact – Issue 1

Issue 1: Are Staff's and OPC's proposed prudence adjustments within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093?

10. The Southwest Power Pool (SPP) is a nonprofit regional transmission organization mandated by the Federal Energy Regulatory Commission to ensure reliable supplies of power, adequate transmission infrastructure and competitive wholesale electricity prices. The SPP operates, but does not own, the bulk electric grid in the central

[16] *Spire Missouri, Inc. v. Pub. Serv. Com'n*, 618 S.W.3d 225, 232 (Mo. banc 2021) (internal citations and quotation marks omitted).
[17] *Associated Natural Gas* at 530.
[18] *Office of Pub. Counsel v. Mo. Pub. Serv. Com'n*, 409 S.W.3d 371, 376-379 (Mo. banc 2013).

United States on behalf of a diverse group of utilities and transmission owners.[19]

11. Evergy operates within the footprint of the SPP.[20]

12. SPP Schedule 11 fees are those expenses that transmission customers within the SPP pay the transmission owners for the build out of the SPP transmission system. The regional portion of the SPP Schedule 11 fees, those costs that are socialized across all transmission customers because the benefits of those upgrades are regional in scale, are allocated based on a company's load ratio share. The load ratio share is the ratio of an entity's average of their 12 monthly peaks to the average of SPP's twelve monthly peaks, expressed as a percentage. As an example, if the regional portion of SPP's Schedule 11 costs was $100 million and a market participant had a load ratio share of 5% then their allocated portion of SPP Schedule 11 fees would be $5 million. It is the regional portion of the SPP Schedule 11 fees that could be impacted from reductions in peak load because it would directly impact the load ratio share.[21]

13. The SPP's electricity market comprises a day-ahead (DA) and a real-time (RT) market. The prices at each generator and load point are known as Locational Marginal Prices (LMP). Thus, the Day-Ahead Locational Marginal Prices (DA LMPs) are the prices, measured at specific points, at which energy is purchased and sold through the SPP market on a day-ahead basis. Similarly, same-day energy purchases and sales done in the market are priced at the real-time locational marginal price (RT LMP). Market participants like Evergy offer generation for sale and bid load for purchase in the SPP

[19] https://spp.org/about-us, accessed April 20, 2022.
[20] List of Issues, Order of Witnesses, Order of Cross-Examination, and Joint Stipulation of Facts, filed October 26, 2021, Joint Stipulated Facts, para. 4.
[21] Ex. 3, Carlson Rebuttal, pp. 7-8.

market daily, with the information submitted on a day-ahead basis.[22]

14. Staff alleged Evergy was imprudent in not attempting to minimize its monthly peak by calling demand-response events under the MEEIA to minimize its monthly coincident peak through the use of the demand-response program as evidenced by minimal event calling. Staff also argues that Evergy could have called demand-response events to pre-cool residential homes with the goal of minimizing the cost of serving load during periods of high LMP, thus shifting load to periods of lower expected LMPs. Staff argued it was imprudent for Evergy not to call any events to seek DA market pricing opportunities.[23]

15. Capacity sales are sales of excess electricity a utility can produce above the amount needed by the utility's customers. The SPP does not have a capacity market, therefore capacity sales are contracted directly between parties, also referred to as bi-lateral capacity sales. To enter a bi-lateral capacity sale, a utility must employ typical sales methods – such as requests for proposals, cold-calling, or calling existing customers for referrals – and find a willing counterpart to purchase the excess capacity.[24]

16. Sales from a bi-lateral contract would flow through the FAC as off-system sales revenue.[25]

17. Evergy has FAC tariff sheets to address fuel and purchased power costs and revenues.[26]

[22] Ex. 3, Carlson Rebuttal, p. 8-9.
[23] Ex. 101, Schedule BJF-d3, pp. 28-29, and BJF-d5, pp. 28-29.
[24] Ex. 3, Carlson Rebuttal, pp. 2-4.
[25] Ex. 101, Schedule BJF-d3, p. 30.
[26] Evergy Metro P.S.C. MO. No. 7, Sheet No. 50, et. al., and Evergy West tariff sheets P.S.C. MO. No. 1, Sheet No. 127, et. al.

18. Fuel-related revenues means those revenues related to the generation, sale, or purchase of energy or capacity and may include off-system sales.[27]

19. An FAC charge means the positive or negative dollar amount on each utility customer's bill, which in the aggregate is to recover from or return to customers the fuel and purchased power adjustment amount.[28]

20. Evergy's SPP Schedule 11 fees are not recovered under the DSIM.[29]

21. Evergy's SPP costs are recovered through the FAC tariff and in base rates.[30]

22. Proceeds related to DA LMP are not recovered through the DSIM; rather, they are recovered through the FAC tariff and base rates.[31]

23. Proceeds to Evergy from bi-lateral capacity sales are not subject to the DSIM,[32] and cannot be recovered through the DSIM.[33]

V. Conclusions of Law – Issue 1

O. An FAC is a tariff provision that allows the utility to recover (or refund after true-up) "prudently incurred fuel and purchased power costs, including transportation."[34]

P. The DSIM is authorized in Section 393.1075, RSMo (Supp. 2021) through the MEEIA. This section allows the Commission to authorize the recovery of demand-side investments. The DSIM is different from the FAC, which is an interim energy

[27] 20 CSR 4240-20.090(1)(M).
[28] 20 CSR 4240-20.090(1)(H).
[29] Ex. 3, Carlson Rebuttal, p. 7.
[30] Ex. 3, Carlson Rebuttal, p. 7.
[31] Ex. 3, Carlson Rebuttal, p. 8.
[32] Ex. 5, File Rebuttal, p. 4.
[33] Ex. 3, Carlson Rebuttal, p. 3.
[34] Section 386.266, RSMo (2016).

charge or periodic rate adjustment granted by the Commission under the authority in Section 386.266, RSMo.

Q. Capacity sales are not a cost that is recovered through Evergy's DSIM.[35]

R. SPP Schedule 11 transportation expenses are not recovered through Evergy's DSIM.[36]

VI. Decision – Issue 1

The Commission finds that imprudent energy costs that are recovered through the FAC should be adjusted in the FAC, and imprudent MEEIA costs that are recovered through a DSIM should be adjusted through the DSIM.

The Commission finds that the three allegations of imprudence regarding SPP Schedule 11 fee reduction, DA LMP market pricing opportunities, and bi-lateral capacity sales all implicate increases and decreases in Evergy's fuel, purchased-power and transportation costs, which are recovered through the FAC as authorized under Section 386.266, RSMo. Accordingly, after a full review of the facts and the law, the Commission finds these allegations of imprudence are best addressed in an FAC prudence review, as the Commission finds them not within the scope of a MEEIA prudence review as defined by 20 CSR 4240-20.093.

VII. Findings of Fact – Issue 2

Issue 2: Did Evergy act imprudently in its implementation of the Residential Programmable Thermostat program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

[35] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 7 Sheet Nos. 49I-J, and Ex. 106b, Evergy West 14 P.S.C. MO. No. 1, 2nd Revised Sheet No. 138.2.
[36] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 7 Original Sheet No. 49I-J, and Ex. 106b, Evergy Missouri West 14 P.S.C. MO. No. 1, 2nd Revised Sheet No. 138.2.

Free residential thermostats

24. Evergy has a Residential Programmable Thermostat Program as part of its demand-side programs. The program is available for any customer currently receiving service under any residential rate schedule. Customers must also have adequate paging and/or radio coverage or constantly connected, Wi-Fi enabled internet service and have a working, central air conditioning system of suitable size and technology to be controlled by the programmable thermostat.[37]

25. A Participant in the Thermostat Program (Participant) is an end-use customer.[38]

26. The voluntary Residential Programmable Thermostat Program is intended to help reduce system peak load and defer the need for additional capacity. The program accomplishes this by cycling the Participants' air conditioning unit(s) or heat pump(s) temporarily in a coordinated effort to limit overall system peak load.[39]

27. Under the Residential Programmable Thermostat Program, free programmable thermostats, which can be controlled via radio or Wi-Fi signals sent to the unit by Evergy or its assignees, are given to Participants in the program.[40]

[37] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 First Revised Sheet No. 2.32 to Original Sheet 2.33, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-107 to Original Sheet R-108.
[38] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet 2.21, and Ex. 106b, Evergy West P.S.C. MO. No. 1 First Revised Sheet R-97.
[39] Ex. 106a. Evergy Missouri Metro P.S.C. MO. No. 2 First Revised Sheet No. 2.32, and Ex. 106b. Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-107.
[40] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 First Revised Sheet No. 2.21, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-107.

28. Under its voluntary Residential Programmable Thermostat Program, Evergy offered a Nest brand programmable thermostat to Participants free of charge, and a flat annual bill credit in exchange for participation in called events.[41]

29. Evergy incurred costs for each installed Nest programmable thermostat that it gave away.[42]

30. During the review period, Evergy Metro gave away 621 programmable thermostats where the recipients of the thermostat did not become Participants in the Residential Programmable Thermostat Program and did not return the thermostat to Evergy Metro.[43]

31. Staff calculated Evergy Metro's costs of providing the 621 unreturned non-participating thermostats at $108,080.[44]

32. During the review period, Evergy West gave away 675 programmable thermostats where the recipients of the thermostat did not participate in the Residential Programmable Thermostat Program and did not return the thermostat to Evergy West.[45]

33. Staff calculated Evergy West's costs of providing the 675 unreturned non-participating thermostats at $116,665.[46] The initial contract for the Residential Programmable Thermostat Program is three years, at the end of which the thermostat is free of charge to the Participant and becomes the property of the Participant.[47]

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[41] Ex. 104, Luebbert Direct, p. 5.
[42] Ex. 104C, Schedule JL-d2, pp. 1-2 of 79. The actual costs are included in an exhibit that is marked as confidential, and thus the details will not be discussed in this order.
[43] Ex. 101, Schedule BJF-d3, p. 26.
[44] Ex. 104C, Schedule JL-d2, p. 2 of 79. The numbers supporting Staff's calculation are taken from Evergy's response to Data Request 53.1, are confidential, and will not be stated in this Report and Order.
[45] Ex. 101, Schedule BJF-d5, p. 26.
[46] Ex. 104C, Schedule JL-d2, p. 1 of 79. The numbers supporting Staff's calculation are taken from Evergy's response to Data Request 53.1, are confidential, and will not be stated in this Report and Order.
[47] Ex. 106 Evergy Missouri Metro P.S.C. MO. No.2 Original Sheet 2.33, and Evergy Missouri West Sheet P.S.C. MO. No. 1 5th Revised Sheet No. R-63.25.

34. Non-participating thermostats, even though they were provided pursuant to the voluntary Residential Programmable Thermostat Program, by definition, do not cycle the ratepayer's air conditioning unit(s) or heat pump(s) temporarily in an Evergy-coordinated effort to limit overall system peak load. Thus, the non-participating thermostats do not help reduce system peak load or defer the need for additional capacity pursuant to the voluntary Residential Programmable Thermostat Program.[48]

Controlling the Budget

35. In 2017, Evergy exceeded the projected installations of programmable thermostats given away pursuant to the voluntary Residential Programmable Thermostat Program. At any point during 2017, Evergy should have known that installations were being adopted more quickly than projected. Thus, Evergy was faced with the decision of how to control the program budget.[49]

36. Evergy chose to control the budget by limiting available installation methods.[50]

37. Staff alleges that the prudent choice would have been lowering the incentive level paid to ratepayers participating in the voluntary Residential Programmable Thermostat Program. Staff argues that altering the incentive level would have decreased program costs to ratepayers as a whole and maintained the expectation to meet the targeted goal of the voluntary Residential Programmable Thermostat Program.[51]

[48] Ex. 105, Luebbert Surrebuttal, p. 17.
[49] Ex. 101, Schedule BJF-d3, p. 25, and BJF-d5, p. 25.
[50] Ex. 101, Schedule BJF-d3, p. 25, and BJF-d5, p. 25.
[51] Ex. 101, Schedule BJF-d3, p. 25, and BJF-d5, p. 25.

38. Evergy testified that changing program rules mid-cycle causes discontinuity and customer confusion.[52]

39. Initially in Cycle 2, Evergy offered three methods for ratepayers to become Participants in the voluntary Residential Programmable Thermostat Program: direct installation; do-it-yourself; and bring-your-own.[53]

40. The participation rate for programmable thermostats installed by the direct installation method and the bring-your-own method is 100%.[54]

41. The do-it-yourself method of joining the voluntary Residential Programmable Thermostat Program begins with the provision of a free programmable thermostat to the home of the ratepayer. The ratepayer is then responsible for the installation and activation of the free programmable thermostat to participate in the voluntary Residential Programmable Thermostat Program.[55]

42. The participation rate for programmable thermostats installed by the do-it-yourself installation method is, on average, a decrease of approximately 10% from the direct installation method.[56]

43. The direct installation method provided budget and participation management tools, which allowed Evergy to control the number of thermostats distributed and installed, and ultimately the number of Participants.[57]

44. Stated differently, when faced with the problem of a shrinking budget, Evergy chose to restrict Participants in the voluntary Residential Programmable

[52] Ex. 5, File Rebuttal, p. 15.
[53] Ex. 5, File Rebuttal, p. 13.
[54] Ex. 5, File Rebuttal, p. 14.
[55] Ex. 5, File Rebuttal, p. 15.
[56] Ex. 5, File Rebuttal, p. 15.
[57] Ex. 5, File Rebuttal, p. 14.

Thermostat Program to only those installing the free programmable thermostat by the direct installation method (professional installation of the thermostat).[58]

45. The direct installation method is more expensive than the do-it-yourself installation method, but the direct installation method has a higher participation rate of the free programmable thermostats.[59]

VIII. Conclusions of Law – Issue 2

S. The Residential Programmable Thermostat Program found in Sections 23.24 and 15.22, of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

> CONTROLS AND INCENTIVES:
>
> Participants will receive a free programmable thermostat . . .[60]

* * *

IX. Decision – Issue 2

Free residential thermostats

Participants are the only authorized recipients of the free programmable thermostats through the voluntary Residential Programmable Thermostat Program. Nevertheless, Evergy gave away free programmable thermostats to non-Participants.

The costs of the voluntary Residential Programmable Thermostat Program are recovered through the DSIM. The money that was paid for the non-participating thermostats did not provide any value to the Program – ratepayers paid for free programmable thermostats that did not participate in the voluntary Residential

[58] Ex. 101, Schedule BJF-d3, p. 25, and BJF-d5, p. 25; and Ex. 105, Luebbert Surrebuttal, p. 11.
[59] Ex. 5, File Rebuttal, p. 14.
[60] Ex. 106a, Evergy Metro Tariff, P.S.C. MO. No. 2, Sheet No. 2.32, and Ex. 106b, Evergy West Tariff, P.S.C. MO. No. 1, 1st and 3rd Revised Sheet No. R-63.10.

Programmable Thermostat Program. The Commission finds that Evergy was imprudent in giving away free programmable thermostats to non-Participants as they did not cycle the ratepayer's air conditioning unit(s) or heat pump(s) temporarily in an Evergy-coordinated effort to limit overall system peak load, and thus did not help reduce system peak load and defer the need for additional capacity pursuant to the voluntary Residential Programmable Thermostat Program.

Evergy argued that cost-effectiveness of the program was excusatory. Under the MEEIA statute, Section 393.1075, RSMo (Supp. 2021), a utility may implement a cost-effective program, but the utility can only recover the reasonable and prudent costs of delivering the program.

To disallow an incurred cost on the basis of imprudence, the Commission must find both that (1) the utility acted imprudently and (2) the imprudence resulted in harm to the utility's ratepayers. The Commission finds that Evergy acted imprudently in giving away thermostats to customers who did not ultimately participate in the program. The Commission finds this imprudence had a detrimental financial impact to the ratepayers in having to pay for thermostats to be given free to non-Participants in the voluntary Residential Programmable Thermostat Program. The costs to the ratepayers of the voluntary Residential Programmable Thermostat Program were unjustifiably higher due to Evergy's giving away thermostats to non-Participants; those costs could have been lower had a different course of action been taken by Evergy. This harm is quantified as $108,080 for Evergy Metro and $116,665 for Evergy West.

Controlling the Budget

The Commission finds that when faced with the problem of a limited budget, Evergy acted reasonably in allowing the number of installations to dictate the number of

Participants by restricting installation methods to only direct installation of the free programmable thermostats. Using the direct installation method as a way to control the program budget insures a higher participation rate over the less expensive option of the do-it-yourself method. The Commission finds Evergy's actions reasonable regarding the use of the direct installation method of the free programmable thermostats to control the program budget.

X. Findings of Fact – Issue 3

Issue 3. Did Evergy act imprudently in its implementation of its Demand Response Incentive Program? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

46. Evergy has a Demand Response Incentive (DRI) Program as part of its demand-side programs.[61]

47. The DRI Program is designed to reduce business participant load during peak periods to improve system reliability, offset forecasted system peaks that could result in future generation capacity additions, and/or provide a more economical option to generation or purchasing energy in the wholesale market.[62]

48. Evergy requires a business customer to have a load curtailment capability of at least 25 kW, meaning the business customer has the ability to forego at least 25 kW of its own load when an event is called.[63]

[61] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet No. 2.09 to Original Sheet 2.13, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-86 to First Revised Sheet R-90.
[62] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet No. 2.09, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-86.
[63] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet No. 2.09, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-86.

49. Under the DRI Program, business customers receive compensation based on individual customer curtailment contracts.[64]

50. The DRI program offers compensation to business customers in exchange for Evergy's ability to direct the reduction of the business customer's load temporarily during peak periods.[65]

51. Staff argues that the DRI incentives paid to business customers should have been lowered as the customers did not participate meaningfully. However, Staff does not discuss how the business customers did not meaningfully participate. Rather, Staff discusses, in this entire section of its testimony, the fact that Evergy called fewer demand-response events than desired. Staff testified, "If it was Evergy's intent to call minimal events, Evergy could have designed the incentive structures to focus on performance during called events; thus reducing program costs by not providing substantial incentives to customers that do not participate in called events."[66]

52. Evergy's DRI Program tariff sheets provide the levels of upfront payments, and were previously approved by the Commission.[67]

53. Evergy operated the DRI Program in compliance with its DRI Program tariff sheets.[68]

[64] Ex. 106a, Evergy Missouri Metro P.S.C. MO. No. 2 Original Sheet No. 2.11, and Ex. 106b, Evergy West P.S.C. MO. No. 1, First Revised Sheet No. R-86-87.
[65] Ex. 106a. Evergy Missouri Metro P.S.C. MO. No. 2 First Revised Sheet No. 2.32, and Ex. 106b. Evergy West P.S.C. MO. No. 1, 1st Revised Sheet No. R-87; see also Ex. 5, File rebuttal, p. 19.
[66] Ex. 104 Luebbert Direct, pp. 5-6.
[67] Ex. 5, File rebuttal, p. 19.
[68] Ex. 5, File rebuttal, p. 19.

XI. Conclusions of Law – Issue 3

T. The Commission-approved tariff states that the DRI "program is designed to reduce customer load during peak periods to help defer future generation capacity additions and provide for improvements in energy supply."[69]

U. The Demand Response Incentive Program found in Sections 23.09 and 15.09 of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

> AVAILABILITY:
>
> The Customer must have a load curtailment capability of at least 25 kW during the Curtailment Season and within designated Curtailment Hours. . .
>
> * * *
>
> CUSTOMER COMPENSATION:
>
> Customer compensation shall be defined within each Customer contract and will be based on contract term, Maximum Number of Curtailment Events and the number of actual Curtailment Events per Curtailment Season. Timing of all payments/credits shall be specified in the curtailment contract with each Customer. Payments shall be paid to the Customer by KCP&L in the form of a check or bill credit as specified in the contract or by a KCP&L-approved Aggregator as defined within the Customer's contract. The credits shall be applied before any applicable taxes. All other billing, operational, and related provisions of other applicable rate schedules shall remain in effect.
>
> Compensation will include:
>
> PROGRAM PARTICIPATION PAYMENT:
>
> For each Curtailment Season, Customer shall receive a payment/credit based upon the incentive structure outlined within the contract term. The Program Participation Payment for a Curtailment Season is equal to the per kilowatt of Curtailable Load rate as defined in the Customer's contract.
>
> The Program Participation Payment will be divided by the number of months in the Curtailment Season and applied as bill credits equally for each month of the Curtailment Season.

[69] Evergy MO Metro Tariff sheet 2.09.

> Curtailment Occurrence Payment: The Customer may also receive an Event Payment for each Curtailment Hour during which the Customer's metered demand is less than or equal to his Firm Power Level

* * *

XII. Decision – Issue 3

The Commission finds that the costs associated with Evergy's DRI Program were not shown to be unreasonable or imprudent. Evergy operated the program as described in its tariff, which was previously approved by the Commission. If parties had concerns about the incentive levels to be paid to business customers participating in the DRI Program, those concerns needed to be raised during the authorization process.

> **Issue 4. Did Evergy act imprudently by not calling more demand-response events for the purpose of reducing Southwest Power Pool (SPP) fees? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?**

Per its decision regarding Issue 1, supra, the Commission finds that this is not an appropriate MEEIA prudence review item and should be addressed in an FAC prudence review. No further findings of fact, conclusions of law, or discussion are needed.

> **Issue 5. Did Evergy act imprudently by not calling more demand-response events for the purpose of reducing the costs associated with day-ahead locational marginal prices? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?**

Per its decision regarding Issue 1, supra, the Commission finds that this is not an appropriate MEEIA prudence review item and should be addressed in an FAC prudence review. No adjustment will be made in this case regarding DA LMP market pricing opportunities. No further findings of fact, conclusions of law, or discussion are needed.

Issue 6. Did Evergy Missouri Metro act imprudently by not entering into more bi-lateral capacity contracts? If the Commission finds Evergy acted imprudently, what adjustment should the Commission order?

Per its decision in Issue 1, supra, the Commission finds that this is not an appropriate MEEIA prudence review issue and should be addressed in an FAC prudence review. Generally, bi-lateral contracts are handled in an FAC prudence case. The contracts, and lack of contracts, for this review period do not provide a basis for adjustment through the DSIM under the MEEIA. No adjustment will be made in this case regarding bi-lateral capacity contracts. No further findings of fact, conclusions of law, or discussion are needed.

XIII. Findings of Fact – Issue 7

Issue 7. Did Evergy act imprudently by virtue of its MEEIA programs' incentive to non-incentive costs ratios?

54. The U.S. Energy Information Administration (EIA), Form EIA-861, Annual Electric Power Industry Report, Energy Efficiency Spending (2013-2018) serves as the basis for OPC's concern, which is that Evergy's incentive to non-incentive cost ratio for energy efficiency incentive spending is high when compared to the national average and when compared to investor-owned utilities operating in Missouri.[70]

55. OPC's testimony does not define what is included as an incentive and what is included as a non-incentive regarding energy efficiency spending.

56. The EIA information provided by OPC does not include a definition of incentive and non-incentive.

57. The EIA website only offers that non-incentive spending could include

[70] Ex. 200, Marke Rebuttal, pp. 3-8.

administration; marketing and education; and evaluation, measurement, and verification. The EIA website also refers to energy efficiency incentive spending as direct spending.[71]

58. OPC witness Marke testified that Evergy has the highest non-incentive cost ratio (cost of incentives compared to the cost of non-incentives) in Missouri.[72] He testified that in 2018, non-incentive costs comprised 55% and 60% of the energy efficiency budgets for Evergy Metro and Evergy West, respectively.[73] OPC concluded that having non-incentive costs above 50% is imprudent, testifying that spending more than half of the energy efficiency budget on non-energy efficiency items is problematic.[74]

59. OPC testified that it seeks a disallowance for Evergy West such that the disallowance would reflect at least a 50/50 equivalent in non-incentive to incentive cost breakdown, which OPC considers 50% to be the maximum level of spending on non-incentive costs that could be considered prudent.[75]

60. OPC also proposed to hold Missouri investor utilities to a standard that they should be in line with utilities across the country in the non-incentive to incentive costs. OPC recommended the Commission order "that utilities participating in ratepayer-funded energy efficiency programs have more than a 5% excess non-incentive budget expenditure deviation from the three-year national average, and any amount above that should be considered imprudent as a general framework for utilities and stakeholders to be aware of in the near future."[76]

61. OPC testified that it was unaware of any Commission rule or precedent that

[71] https://www.eia.gov/todayinenergy/detail.php?id=42975 accessed April 22, 2022.
[72] Ex. 200, Marke Rebuttal, p. 3.
[73] Ex. 200, Marke Rebuttal, p. 7.
[74] Tr. Vol. 2, p. 210.
[75] Ex. 201, Marke Surrebuttal, pp. 0-0.
[76] Ex. 200, Marke Rebuttal, pp. 12-13.

establishes a specific ratio for a prudency standard.[77]

62. OPC testified that its recommended incentive to non-incentive cost ratio is based on the witness's expertise.[78]

63. OPC further testified that there are many nuances within a utility's characterization of a cost as incentive or non-incentive, and that utilities may characterize incentive and non-incentive costs differently depending on location.[79]

64. Staff testified that the non-incentive to incentive cost ratio is a policy issue that deserves more robust discussion, prospectively, and outside of a prudence review.[80]

XIV. Conclusions of Law – Issue 7

V. A statement of general applicability that implements, interprets, or prescribes law or policy is a rule within the definition of Section 536.010, RSMo, (2016) and would require rulemaking procedures in order to be valid.[81]

XV. Decision – Issue 7

OPC alleges that Evergy's percentage of non-incentive costs as compared to incentive costs is imprudent when over the amount of 50%. OPC does not offer any citation of law, rule, precedent or other standard to support a 50% prudency standard as the maximum non-incentive spending allowed and still be considered prudent. Moreover, there is no singular definition of incentive or non-incentive that would allow a comparison between utilities.

[77] Tr. Vol. 2, pp. 216-217.
[78] Tr. Vol. 2, p. 217.
[79] Tr. Vol. 2, pp. 217-219.
[80] Ex. 103, Tandy Surrebuttal, p. 3.
[81] See also *State ex rel. Beaufort Transfer Co. v. PSC*, 610 S.W.2d 96 (WD 1980).

The Commission is foreclosed from issuing orders that would have a general applicability, which is the essence of OPC's concern. If the Commission were to find a maximum of 50% allowable non-incentive spending in this case (or even a standard of 5% non-incentive spending over the national average), it could later be argued to be discriminatory if the Commission finds a different maximum of allowable non-incentive spending for a different utility. Further, outside of a formal rulemaking, it would be inappropriate for the Commission to make a determination as to whether an amount over 50%, or 5% non-incentive spending over the national average, was imprudent as a generally applicable standard. As such, OPC's recommendation for a 50%, or 5% non-incentive spending over the national average, presumed prudence limit requires a rulemaking procedure – which should include a more robust discussion and be focused prospectively. Therefore, the Commission finds that there was not sufficient evidence to support a finding that Evergy's non-incentive to incentive cost ratio was unreasonable or imprudent.

THE COMMISSION ORDERS THAT:

1. Evergy Metro shall refund to ratepayers the prudence adjustment amount of $108,080 and Evergy West shall refund the amount of $116,665, each amount is plus interest. These amounts shall be refunded as ordered adjustments in Evergy's next DSIM Rider rate adjustment filings.

2. Staff's request for an ordered adjustment in both File No. EO-2020-0227 and EO-2020-0228 related to alleged imprudence in changing the manner of thermostat installation due to budget restrictions is denied.

3. Staff's request for an ordered adjustment in both File No. EO-2020-0227 and EO-2020-0228 related to alleged imprudence in the administration of the DRI program is denied.

4. OPC's request for an ordered adjustment in File No. EO-2020-0228 related to alleged imprudence in non-incentive to incentive costs ratio is denied.

5. This order shall be effective on June 3, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Ninth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Evergy Missouri West, Inc. d/b/a Evergy Missouri West	))))	**File No. EO-2020-0262**

REPORT AND ORDER

ELECTRIC

§20. Rates

Section 386.266, RSMo, gives the Commission authority to authorize an electrical corporation to use a periodic rate adjustment mechanism, such as a Fuel Adjustment Clause. Such mechanisms allow the utility an opportunity to recover prudently incurred fuel and purchased power costs, including transportation.

EXPENSE

§22. Reasonableness generally

To ensure that only prudently incurred costs are recovered, Subsection 386.266.5(4), RSMo, requires that any authorized periodic rate adjustment mechanism provide for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate.

§23. Comparisons to test reasonableness

In determining whether a utility's conduct was prudent, the Commission will judge that conduct by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Ninth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Evergy Missouri West, Inc. d/b/a Evergy Missouri West	))))	**File No. EO-2020-0262**

REPORT AND ORDER

Issue Date: May 4, 2022

Effective Date: June 3, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Ninth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Evergy Missouri West, Inc. d/b/a Evergy Missouri West	))))	**File No. EO-2020-0262**

PARTIES & APPEARANCES

EVERGY MISSOURI METRO AND EVERGY MISSOURI WEST:

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STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Jeff Keevil, Staff Counsel, and **Travis Pringle**, Staff Counsel, Missouri Public Service Commission, 200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, Missouri 65102.

DEPUTY CHIEF REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

This case involves the Ninth Prudence Review of the Fuel Adjustment Clause (FAC) of Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy West) and the Third Prudence Review of the FAC of Evergy Metro, Inc. d/b/a Evergy Missouri Metro (Evergy Metro)(collectively, "Evergy"). For Evergy West, Staff filed its *Notice of Start of Ninth Prudence Review* in File No. EO-2020-0262 on March 2, 2020, advising that it intended to audit Evergy West's FAC period June 1, 2018, through November 30, 2019. For Evergy Metro, Staff filed its *Notice of Start of Third Prudence Review* in File No. EO-2020-0263 on March 2, 2020, advising that it intended to audit Evergy Metro's FAC period July 1, 2018, through December 31, 2019. The Commission gave notice of the filings, acknowledged the parties to the companies' most recent general rate case were automatically parties in this matter under Commission Rule 20 CSR 4240-20.090(17)(A), and granted intervention to other entities. On August 28, 2020, Staff filed a report in each case setting out the findings of its audits.

According to Staff's report, it found no imprudence during its Evergy West FAC audit but did find costs associated with the retirement of its Sibley generating station should not have been included and recommended a disallowance of $1,039,649 for the FAC amount. Evergy West agreed to remove these costs and seek recovery through another mechanism.[1]

Staff also found no imprudence with regard to Evergy Metro's FAC audit for the period at issue. After filing its report, Staff discovered some fuel residual costs included

[1] Ex. 102, Fortson Corrected Direct, p. 3.

during Accumulation Period 8 that led to a recommended disallowance of $15,492. Evergy Metro agreed to the disallowance and it was included in a *Partial Stipulation and Agreement* filed on December 18, 2020. Staff did not review demand response programs as part of its audits. Staff stated that it believed those programs were more appropriately addressed in the Missouri Energy Efficiency Investment Act (MEEIA) prudence reviews.[2]

On September 8, 2020, the Office of the Public Counsel (OPC) and the Sierra Club requested a hearing in File Nos. EO-2020-0262 and EO-2020-0263. The Commission set a procedural schedule including the filing of written testimony, a list of issues to be decided by the Commission and an evidentiary hearing. On September 22, 2020, the Commission consolidated the Evergy Metro and Evergy West cases with File No. EO-2020-0262 being the lead case.

Over the course of hearing preparation, settlement was reached on a number of issues. The *Partial Stipulation and Agreement*, filed on December 18, 2020, and approved on January 20, 2021, concerned (1) the removal of Sibley retirement costs from Evergy West's FAC calculation; (2) Evergy Metro's removal of Montrose fuel residual costs from its FAC calculations; and (3) Evergy Metro's removal of the Missouri retail Montrose costs from its FAC calculations. This agreement covered the disallowances originally recommended by Staff.

A *Unanimous Partial Stipulation and Agreement*[3] was filed on January 15, 2021, and approved on January 27, 2021. This agreement settled issues raised by the Sierra Club concerning Evergy's self-scheduling practices.

[2] *See* File Nos. EO-2020-0227 and EO-2020-0228.
[3] Although the agreement was titled as a "unanimous" agreement, there are parties that did not sign the agreement.

Evergy, Staff, and OPC filed a *Unanimous Partial Stipulation and Agreement*[4] on January 27, 2021, the first day of hearing. This agreement committed Evergy to model plans that do not include the assumed sale of excess capacity in future integrated resource plan (IRP) filings. The agreement was approved by the Commission on February 10, 2021.

A *List of Issues, Order of Witnesses, Order of Opening Statements, Order of Cross-Examination and Joint Stipulation of Facts* was filed on January 19, 2021. Only three issues as set out by the parties remain for Commission decision. The remaining issues are:

1. Was Evergy imprudent in the management of its demand response programs?

2. Was it imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs?

3. If it was imprudent for Evergy to not call additional demand response events in a manner that would have reduced FAC costs, is it more appropriate to address the imprudent implementation of the programs through an ordered FAC adjustment or an ordered demand side investment mechanism (DSIM) adjustment?

A hearing was held on January 27-28, 2021. The parties filed initial briefs on March 1, 2021, and reply briefs on March 15, 2021.

[4] Although the agreement was titled as a “unanimous” agreement, there are parties that did not sign the agreement.

II. General Findings of Fact

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

1. Evergy Metro and Evergy West are Missouri certificated electrical corporations as defined by Section 386.020(15), RSMo (Supp. 2021), and are authorized to provide electric service to portions of Missouri.

2. The Commission first authorized an FAC for Aquila, Inc. (Aquila) effective July 5, 2007, in File No. ER-2007-0004. The Commission approved the acquisition of Aquila, by Great Plains Energy, Inc. and subsequently Aquila was renamed KCP&L Greater Missouri Operations Company (GMO). The Commission approved the merger of Great Plains Energy, Inc. with Westar Energy, Inc. in File No. EM-2018-0012 and subsequently, GMO was renamed Evergy Missouri West, Inc., d/b/a Evergy Missouri West.[5] Since its initial approval in 2007, the Commission has approved continuation of the FAC, with modifications, in Evergy West's general rate cases -- File Nos. ER-2009-0090, ER-2010-0356, ER-2012-0175, ER-2016-0156 and ER-2018-0146.

3. This is Staff's ninth prudence review for Evergy West's FAC. The prudence review covers Evergy West's twenty-third, twenty-fourth, and twenty-fifth six-month accumulation periods ranging from June 1, 2018, through November 30, 2019.[6] Staff analyzed items affecting Evergy West's fuel costs, purchased power costs, net emission

[5] Hereafter, "Evergy West" is used to refer to the current company and its predecessors.
[6] The twenty-third accumulation period started June 1, 2018, and ended November 30, 2018. The twenty-fourth accumulation period started December 1, 2018, and ended May 31, 2019. The twenty-fifth accumulation period started June 1, 2019 and ended November 30, 2019. Ex. 102, Schedule BJF-d3, pp. 4, 5, and 8.

costs, transmission costs, off-system sales revenues, and renewable energy credit revenues.[7]

4. The Commission first authorized an FAC for Evergy Metro, f/k/a Kansas City Power & Light Company[8] in File No. ER-2014-0370. Since then, the Commission has approved continuation of Evergy Metro's FAC, with modifications, in the company's general rate cases -- File Nos. ER-2016-0285 and ER-2018-0145.[9]

5. For each accumulation period, Evergy's Commission-approved FACs allow Evergy to recover from (if the actual net energy costs exceed) or refund to (if the actual net energy costs are less than) its ratepayers 95% of its Missouri actual net energy costs less net base energy cost.[10] Evergy accumulates variable fuel costs, purchased power costs, transmission costs, and net emissions costs minus off-system sales revenues and renewable energy credit revenues during six-month accumulation periods.[11] Each six-month accumulation period is followed by a twelve-month recovery period when 95% of the calculated amount (including the monthly application of interest) is recovered from or returned to ratepayers through an increase or decrease in the fuel adjustment rate during the twelve-month recovery period.[12] Because the fuel adjustment rate rarely, if ever, will exactly match the required offset, Evergy's FACs are designed to true-up the difference between the revenues billed and the revenues authorized (including the monthly application of interest) for collection during recovery periods.[13] Any disallowance

[7] Ex. 102, Schedule BJF-d3, p. 5.
[8] Hereafter, "Evergy Metro" is used to refer to the current company and its predecessor.
[9] Ex. 102, Schedule BJF-d5, p. 4.
[10] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7. (All terms and formulas are defined in Evergy's FACs at Evergy Missouri West's 4th Revised Sheet No. 127.12, 1st Revised Sheet No. 127.23, and 2nd Revised Sheet no. 127.23, and Evergy Missouri Metro's 1st Revised Sheet No. 50.31, 2nd Revised Sheet No. 50.31 and 3rd Revised Sheet No. 50.31.
[11] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7.
[12] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7; and Ex. 203, Mantle Surrebuttal, p. 8.
[13] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7.

the Commission orders as a result of a prudence review will also include interest at Evergy's short-term interest rate and will be accounted for as an item of cost in a future filing to adjust the fuel adjustment rate.[14]

III. General Conclusions of Law

A. Subsection 386.020(15), RSMo (Supp. 2021) defines "electrical corporation" as including:

> every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, . . . owning, operating, controlling or managing any electric plant . . . .

B. Section 386.266, RSMo (Supp. 2021) gives the Commission authority to authorize an electrical corporation, such as Evergy Metro and Evergy West, to utilize a periodic rate adjustment mechanism, such as the FAC. Subsection 386.266.1 requires that such mechanisms allow the utility an opportunity to recover "prudently incurred fuel and purchased power costs, including transportation."

C. Evergy Metro's approved FAC Tariff Sheets in effect during the prudence review period are set out in Kansas City Power and Light Company, P.S.C. MO. No. 7[15] as follows below their respective time frames:[16]

July 1, 2018 through December 5, 2018	**December 6, 2018 through December 31, 2019**
Second Revised Sheet No. 50.11	Original Sheet No. 50.21
Second Revised Sheet No. 50.12	Original Sheet No. 50.22
Second Revised Sheet No. 50.13	Original Sheet No. 50.23
Second Revised Sheet No. 50.14	Original Sheet No. 50.24
Second Revised Sheet No. 50.15	Original Sheet No. 50.25

[14] Ex. 102, BJF-d6, pp. 6-7
[15] Tariffs adopted by Evergy Missouri Metro at Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro, P.S.C. MO. No. 7, Original Sheet No. 0.1, effective October 7, 2019.
[16] Ex. 102, Fortson Corrected Direct, Schedule BJF-d5, p. 6.

July 1, 2018 through December 5, 2018	December 6, 2018 through December 31, 2019
Second Revised Sheet No. 50.16	Original Sheet No. 50.26
Second Revised Sheet No. 50.17	Original Sheet No. 50.27
Second Revised Sheet No. 50.18	Original Sheet No. 50.28
Second Revised Sheet No. 50.19	Original Sheet No. 50.29
	Original Sheet No. 50.30

D. Evergy West's Commission-approved FAC Tariff Sheets in effect during the prudence review period are as set out in KCP&L Greater Missouri Operations Company, P.S.C. MO. No. 1,[17] as follows below their respective time frames:[18]

June 1, 2018 through December 5, 2018	December 6, 2018 through November 30, 2019
3rd Revised Sheet No. 127.1	Original Sheet No. 127.13
3rd Revised Sheet No. 127.2	Original Sheet No. 127.14
3rd Revised Sheet No. 127.3	Original Sheet No. 127.15
3rd Revised Sheet No. 127.4	Original Sheet No. 127.16
7th Revised Sheet No. 127.5	Original Sheet No. 127.17
3rd Revised Sheet No. 127.6	Original Sheet No. 127.18
3rd Revised Sheet No. 127.7	Original Sheet No. 127.19
3rd Revised Sheet No. 127.8	Original Sheet No. 127.20
3rd Revised Sheet No. 127.9	Original Sheet No. 127.21
5th Revised Sheet No. 127.10	Original Sheet No. 127.22
1st Revised Sheet No. 127.11	

E. Evergy's approved FAC tariffs allow the utility to recover 95% of fuel and purchased power costs through the FAC mechanism.[19]

F. To ensure that only "prudently incurred" costs are recovered, Subsection 386.266.5(4), RSMo (Supp. 2021) requires that any authorized periodic rate adjustment mechanism provide for:

[17] Tariffs adopted by Evergy Missouri West at Evergy Missouri West, Inc. d/b/a Evergy Missouri West, P.S.C. MO. No. 1, 2nd Revised Sheet No. 0.1, effective October 7, 2019.
[18] Ex. 102, Fortson Corrected Direct, Schedule BJF-d5, p. 6.
[19]Tariffs adopted by Evergy Missouri Metro at Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro, P.S.C. MO. No. 7, Second Revised Sheet No. 50.12 and Original Sheet No. 50.22, effective December 6, 2018; And tariffs adopted by Evergy Missouri West at Evergy Missouri West, Inc. d/b/a Evergy Missouri West, P.S.C. MO. No. 1, 3rd Revised Sheet No. 127.2 and Original Sheet No. 127.14, effective December 6, 2018.

> prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate.

G. Commission Rule 20 CSR 4240-20.090(7) also requires that such prudence reviews occur no less frequently than at eighteen-month intervals.

H. Evergy West's and Evergy Metro's tariffs also provide that as part of its FAC, there "shall be prudence reviews of costs" that "shall occur no less frequently than at 18-month intervals,"[20] which is consistent with Commission Rule 20 CSR 4240-20.090(7) and Subsection 386.266.5(4) RSMo.

I. In determining whether a utility's conduct was prudent, the Commission will judge that conduct by:

> asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[21]

J. Subsection 393.150.2, RSMo (2016) states that the utility bears the burden of proving that a requested rate is just and reasonable.

K. Although the utility always bears the burden of proof, the Commission will, in the absence of adequate contrary evidence, presume that a utility's spending is prudent. This presumption of prudence affects who has the burden of proceeding, but does not change the burden of proof.[22]

[20] Evergy Missouri West Tariff P.S.C. Mo No. 1, Original Sheet No. 127.22; and, Evergy Missouri Metro Tariff P.S.C. Mo No. 1 Original Sheet No. 50.30.
[21] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Com'n*, 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).
[22] *Office of Pub. Counsel v. Mo. Pub. Serv. Com'n*, 409 S.W.3d 371, 379 (Mo. banc 2013).

L. The Missouri Supreme Court further affirmed the Commission's rationale in stating,

> The PSC ordinarily applies a presumption of prudence in determining whether a utility reasonably incurred its expenses. This presumption of prudence will not survive a showing of inefficiency or improvidence that creates serious doubt as to the prudence of an expenditure. If such a showing is made, the presumption drops out and the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.[23]

M. Evergy West and Evergy Metro had Commission-approved tariffs in effect that set out three demand response programs – Residential Programmable Thermostat, Business Programmable Thermostat, and Demand Response Incentive (DRI).[24]

N. The Residential Programmable Thermostat Program found in Sections 23.24 and 15.22, of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

> PURPOSE:
>
> The voluntary Programmable Thermostat Program is intended to help reduce system peak load and thus defer the need for additional capacity. The program accomplishes this by cycling the Participants' air conditioning unit(s) or heat pump(s) temporarily in [an Evergy] coordinated effort to limit overall system peak load.
>
> * * *

[23] *Spire Missouri, Inc. v. Pub. Serv. Com'n*, 618 S.W.3d 225, 232 (Mo. banc 2021) (internal citations and quotation marks omitted).

[24] Exhibit No. 204, Evergy Metro Tariff, P.S.C. Mo. No. 2, Section 22.13 Programmable Thermostat (Frozen), Sheet Nos. 1.93 and 1.94 (both effective January 1, 2016); Section 23.08 Business Programmable Thermostat, Sheet Nos. 2.07 (effective June 3, 2018) and 2.08 (effective April 1, 2016); Section 23.09 Demand Response Incentive, Sheet Nos. 2.09 through 2.14 (all effective June 3, 2018); Section 23.24 Residential Programmable Thermostat, Sheet Nos. 2.32 (effective June 3, 2018) and 2.33 (effective April 1, 2016); Evergy West Tariff, P.S.C. Mo. No. 1, Section 15.08 Business Programmable Thermostat, Sheet Nos. R-84 (effective June 3, 2018) and R-85 (effective June 3, 2018); Section 15.09 Demand Response Incentive, Sheet Nos. R-86 through R-90 (all effective June 3, 2018); and Section 15.22 Residential Programmable Thermostat, Sheet Nos. R-107 (effective June 3, 2018) and R-108 (effective April 1, 2016).

CURTAILMENT SEASON:

The curtailment Season will extend from June 1 to September 30.

CURTAILMENT LIMITS:
[Evergy] may call a curtailment event any weekday, Monday through Friday, excluding Independence Day and Labor Day, or any day officially designated as such. A curtailment event occurs whenever the thermostat is being controlled by [Evergy] or its assignees. [Evergy] may call a maximum of one curtailment event per day per Participant, lasting no longer than four (4) hours per Participant. [Evergy] is not required to curtail all Participants simultaneously and may stagger curtailment events across participating Participants.

CURTAILMENT OPT OUT PROVISION:

A Participant may opt out of one air conditioning cycling curtailment event each month during the Curtailment Season by notifying [Evergy] at any time prior to or during a curtailment event. Participant may opt out of an ongoing event via their smart phone or the thermostat itself. . . .

NEED FOR CURTAILMENT:

Curtailments may be requested for operational or economic reasons. Operational curtailments may occur when any physical operating parameter(s) approaches a constraint on the generation, transmission or distribution systems or to maintain [Evergy's] capacity margin requirement. Economic reasons may include any occasion when the marginal cost to produce or procure energy or the price to sell the energy in the wholesale market is greater than a customer's retail price.

O. The Business Programmable Thermostat Program found in Sections 23.08 and 15.08 of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

PURPOSE:

The voluntary Business Programmable Thermostat Program is intended to help reduce system peak load and thus defer the need for additional capacity. The program accomplishes this by cycling the Participants' air conditioning unit(s) temporarily in [an Evergy] coordinated effort to limit overall system peak load.

* * *

CURTAILMENT SEASON:

The curtailment Season will extend from June 1 to September 30.

CURTAILMENT LIMITS:

[Evergy] may call a curtailment event any weekday, Monday through Friday, excluding Independence Day and Labor Day, or any day officially designated as such. A curtailment event occurs whenever the thermostat is being controlled by [Evergy] or its assignees. [Evergy] may call a maximum of one curtailment event per day per Participant, lasting no longer than four (4) hours per Participant. [Evergy] is not required to curtail all Participants simultaneously and may stagger curtailment events across participating Participants.

CURTAILMENT OPT OUT PROVISION:

A Participant may opt out of one air conditioning cycling curtailment event each month during the Curtailment Season by notifying [Evergy] at any time prior to or during a curtailment event. Participant may opt out of an ongoing event via their smart phone or by the thermostat itself. . . .

NEED FOR CURTAILMENT:

Curtailments may be requested for operational or economic reasons. Operational curtailments may occur when any physical operating parameter(s) approaches a constraint on the generation, transmission or distribution systems or to maintain [Evergy's] capacity margin requirement. Economic reasons may include any occasion when the marginal cost to produce or procure energy or the price to sell the energy in the wholesale market is greater than a customer's retail price.

P. The Demand Response Incentive Program found in Sections 23.09 and 15.09 of Evergy Metro and Evergy West's applicable tariffs, respectively, state, in part:

PURPOSE:

The voluntary program is designed to reduce customer load during peak periods to help defer future generation capacity additions and provide for improvements in energy supply. The maximum recurring monthly and/or annual bill credit will not cause the Programs' cost to be higher than the benefits realized from the avoided capacity.

* * *

PROGRAM PROVISIONS:

This Program may be executed by either of two methods:

Traditional Demand Response Incentive (DRI)
A participant with load curtailment potential during the Curtailment Season and designated Curtailment hours enrolls directly with [Evergy] or [Evergy]-approved Aggregator. The Participant agrees to curtail load at or below their contracted Firm Power Level during a[n Evergy] Curtailment Event. The Participant or Aggregator receives an event notice from [Evergy] and they may manually execute their facility curtailment plan to fulfill their contract. The Participant receives financial incentives from June through September for Program participation and payments for successful hourly event performance or penalties for non-performance. Participants are notified in advance of scheduled curtailment events and may opt not to participate in an event, but [Evergy] reserves the right to assess financial penalties and or contract termination for non-participation as described in Participant's individual contract.

Automated Demand Side Management (ADSM)
A Participant with load curtailment potential during the Curtailment Season and designated Curtailment hours enrolls directly with [Evergy] or a[n Evergy]-approved Aggregator. [Evergy] then utilizes the Participant's building energy management system to measure, analyze and report near real time curtailable load capacity. This two-way communication system creates a near real-time bridge between the Program and the Participant's curtailable equipment. The Participant or their Aggregator receives the curtailment event notice from [Evergy] then sends the signal to the energy management system to control individual equipment loads to meet necessary kW load reduction. The Participant may override this automated signal before or during an event. Participant receives a financial incentive for participation, but no per event payment. Any limitations on event over-rides or associated penalties are detailed in the Participant's individual contract. The Aggregator delivering the ADSM method will provide specific terms of participation in Participant's Agreement that may vary from the following Program Provisions.

CURTAILMENT SEASON:

. . . curtailment season period of June 1 to September 30. The Curtailment Season directly contracted Customers will exclude Independence Day and Labor Day, or the days celebrated as such. . . .

> CURTAILMENT LIMITS:
>
> The Customer contract shall specify the Maximum Number of Curtailment Events for which the Customer agrees to curtail load during each Curtailment Season. For customers contracting directly with [Evergy], the Maximum Number of Curtailment Events shall be at least one (1) but shall not exceed ten (10) separate occurrences per Curtailment Season. Each Curtailment Event shall be no more than eight consecutive hours and no more than one occurrence will be required per day. The Company may call a Curtailment Event no more than three consecutive days per calendar week. The cumulative hours of Curtailment Hours per Customer shall not exceed eighty (80) hours in any Curtailment Season. . . .
>
> * * *
>
> NEED FOR CURTAILMENT:
>
> Curtailments can be requested for operational or economic reasons. Operational curtailments may occur when any physical operating parameters approach becoming a constraint on the generation, transmission, or distribution systems, or to maintain [Evergy's] capacity margin requirement. Economic curtailment may occur when the marginal cost to produce or procure energy, or the opportunity to sell the energy in the wholesale market, is greater than the Customer's retail price.

IV. Findings of Fact – Issue 1

Issue 1: Was Evergy imprudent because it did not utilize its demand response programs to minimize FAC costs?[25]

In addition to the above Findings of Fact, the Commission makes the following findings.

6. Supply-side resources are resources used to generate electricity to meet customer needs.[26] Demand-side resources, on the other hand, usually provide incentives to the customers to reduce or change their electricity demands.[27]

[25] This is a restatement combining the first two issues remaining on the parties' issues list.
[26] Ex. 203, Mantle Surrebuttal, pp. 4-5.
[27] Ex. 203, Mantle Surrebuttal, pp. 4-5.

7. Demand response programs target customers' usage at specific times.[28] Demand response programs have value because they enable the utility to reduce its load at system peak, thus reducing the amount of supply-side resources needed.[29] Demand response programs can also be used to reduce the energy purchased at peak times when market prices tend to be more expensive.[30] Reducing the amount of energy purchased when market prices are more expensive will reduce the energy costs that are recovered through the FAC.[31]

8. Southwest Power Pool (SPP) Schedule 11 fees are charges by the SPP to recover costs associated with the new transmission system investment in the SPP footprint.[32] A portion of the SPP Schedule 11 fees are recovered from customers by Evergy through the FAC.[33] Reducing peak energy purchased may reduce the amount of SPP fees.[34]

9. Evergy has two kinds of demand response programs -- programmable thermostats for both residential and commercial customers, and the Demand Response Incentive (DRI) for commercial customers.[35]

10. Under the programmable thermostat programs, Evergy gave free programmable thermostats to customers in exchange for the ability to reduce the customer's air conditioning load from June through September for up to four consecutive hours.[36] The tariffs effective at the time,[37] allowed Evergy Metro and Evergy West to call

[28] Ex. 203, Mantle Surrebuttal, p.5.
[29] Ex. 203, Mantle Surrebuttal, p. 5.
[30] Ex. 203, Mantle Surrebuttal, p. 5.
[31] Ex. 203, Mantle Surrebuttal, pp. 5-6.
[32] Ex. 203, Mantle Surrebuttal, pp. 20-21; and Tr. pp. 254-255.
[33] Ex. 202, Mantle Direct, pp. 20-22.
[34] Ex. 203, Mantle Surrebuttal, pp. 20-22; and Tr. pp. 254-255.
[35] Ex. 203, Mantle Surrebuttal, p. 6.
[36] Ex. 203, Mantle Surrebuttal, p. 6.
[37] Ex. 204, Applicable Demand Response Tariff Sheets.

one programmable thermostat event per day, any Monday through Friday, excluding the July 4th and Labor Day holidays, for residential and business thermostats, during the months of June through September during the prudence review periods of Evergy Metro and Evergy West.[38]

11. Evergy Metro and Evergy West bill customers through a separate line item on customers' bills titled "DSIM Charge" to recover estimated energy efficiency program costs through rates approved by the Commission.[39]

12. Evergy Metro customers were billed DSIM charges totaling $41.6 million and Evergy West customers, $42.2 million from April 1, 2018 through December 31, 2019.[40]

13. The programmable thermostat program was designed for a maximum of 15 events per annual curtailment season (June 1 through September 30).[41] Customers who signed agreements when receiving the thermostats agreed to a maximum of 15 events per season.[42]

14. The purpose of the residential and business programmable thermostat programs is the same. According to Evergy's tariffs these programs are meant "to help reduce system peak load and thus defer the need for additional capacity. The program accomplishes this by cycling the Participants' air conditioning unit(s) or heat pump(s) temporarily in [an Evergy] coordinated effort to limit overall system peak load."[43]

[38] Tariff Sections 23.24 and 15.22 Residential Programmable Thermostat of Evergy Metro and Evergy West; and Sections 23.08 and 15.08 Business Programmable Thermostat of Evergy Metro and Evergy West
[39] Ex. 104, Luebbert Surrebuttal, Schedules JL-s2, p. 10 and JL-s3 p. 10.
[40] Ex. 104, Luebbert Surrebuttal, Schedules JL-s2, p. 7 and JL-s3, p. 7.
[41] Ex. 4, File Rebuttal, pp. 4-5.
[42] Ex. 8, Schedule BF-s1 (Brian File, Rebuttal Testimony, EO-2020-0227 and EO-2020-0228), p. 12.
[43] Sections 23.24 and 15.22 Residential Programmable Thermostat of Evergy Metro and Evergy West's applicable tariffs and Sections 23.08 and 15.08 Business Programmable Thermostat of Evergy Metro and Evergy West's applicable tariffs.

15. The DRI program is for larger electric customers that have the ability to reduce their usage by at least 25 kilowatts.[44] In exchange for curtailing their power usage, the large customers are given an upfront financial incentive for participating and some of the participants may also receive payment for successful performance. The DRI program also includes a penalty for customers when the curtailment amount contracted by the customer is not achieved. The DRI program is designed for Evergy to call a maximum of ten events of up to eight hours each per annual curtailment season (June 1 through September 30).[45]

16. The purpose of Evergy's DRI program is "to reduce customer load **during peak periods** to help defer future generation capacity additions and provide for improvements in energy supply."[46]

17. Evergy Metro achieved cumulative annual demand savings for its business and residential programmable thermostat and DRI programs of 7,000 kW compared to the planned annual demand savings of 9,138 kW for April 1, 2018 through December 31, 2019. The cumulative annual demand savings achieved by Evergy West were 10,249 kW compared to the planned annual demand savings of 24,901 kW. Both Evergy Metro and Evergy West fell short of their planned megawatt savings for their demand response programs.[47]

18. The tariffs authorizing the demand response programs state that "[c]urtailments may be requested for operational **or economic reasons**."[48]

[44] Ex. 203, Mantle Surrebuttal, p. 6.
[45] Ex. 203, Mantle Surrebuttal, p. 6; Tariff Sections 23.09 and 15.09 Demand Response Incentive of Evergy Metro and Evergy West.
[46] Sections 23.09 and 15.09 Demand Response Incentive of Evergy Metro and Evergy West's applicable tariffs. Emphasis added.
[47] Ex. 104, Luebbert Surrebuttal, Schedule JL-s2, p. 23 and JL-s3, p. 23.
[48] Ex. 203, Mantle Surrebuttal, p. 7, citing to Evergy tariff sheets. (Emphasis added).

19. In 2018, Evergy called the following programmable thermostat events in both service areas simultaneously:[49]

June 28, 2018 (4:00 p.m. to 6:00 p.m.)

August 6, 2018 (4:00 p.m. to 6:00 p.m.)

20. In 2018, Evergy called a test event and the following DRI program events in both service areas simultaneously:[50]

June 28, 2018 (3:00 p.m. to 6:00 p.m.)

August 6, 2018 (4:00 p.m. to 7:00 p.m.)

21. In 2019, Evergy called the following programmable thermostat events in both service areas simultaneously:[51]

July 18, 2019 (4:00 p.m. to 6:00 p.m.)

July 19, 2019 (4:00 p.m. to 6:00 p.m.)

Aug 6, 2019 (4:00 p.m. to 6:00 p.m.)

Aug 7, 2019 (4:00 p.m. to 6:00 p.m.)

Aug 12, 2019 (4:00 p.m. to 6:00 p.m.)

22. In 2019, Evergy called a test event and the following DRI program events in both service areas simultaneously:[52]

July 18, 2019 (2:00 p.m. to 5:00 p.m.)

Aug 7, 2019 (2:00 p.m. to 4:00 p.m.)

23. Brian File, on behalf of Evergy, testified that customer trust could be harmed and more customers may opt out of the curtailment events if more events were called.[53]

[49] Tr. Vol. 2, p. 147.
[50] Tr. Vol. 2, p. 147.
[51] Ex. 9, Schedule BF-s2, p. 14; and Exhibit 8, BF-s1, p. 12; and Tr. Vol. 2, pp. 147-148.
[52] Tr. 2, pp. 147-148.
[53] Ex. 4, File Rebuttal, pp. 8-9

However, Evergy's support for this assertion was limited to three data points showing that the total amount of participation (the length of time a customer participated in a curtailment event) was 6% lower in MEEIA Program Year (PY) 2016 when 8 events were called versus PY 2017 and PY 2018 when 3 and 2 events were called respectively.[54]

24. The Commission-approved stipulation and agreement in File Nos. EO-2019-0132 and EO-2019-0133[55] required Evergy Metro and Evergy West to each call, as part of their MEEIA Cycle 2 extension, five programmable thermostat events from June through September 2019.[56]

25. Because of the sharing mechanism in the FAC tariff, Evergy is only able to keep 5% of the benefits achieved when curtailment events are called for economic reasons. The other 95% of any reductions in fuel and purchased power costs are flowed through the FAC clause to customers.[57]

26. Evergy also offers a demand response program, the Market Based Demand Response Program,[58] that gives large customers the opportunity to receive market settlement fees from the SPP.[59] The Market Based Demand Response Program is not a MEEIA program and the customers cannot receive benefits through this program for events called to meet the MEEIA demand response program.[60] This program allows the

[54] Ex. 4, File Rebuttal, p. 9; and Ex. 203, Mantle Surrebuttal.
[55] Ex. 15, *Order Approving Stipulation and Agreement,* Exhibit 1 *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case*.
[56] Ex. 15, *Order Approving Stipulation and Agreement,* Exhibit 1 *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case,* paragraph 7.b.; and Ex. 8, File Rebuttal EO-2020-0277 and 0288, Schedule BF-s1, p. 12.
[57] Ex. 203, Mantle Surrebuttal, p. 8.
[58] The tariff sheets implementing this program became effective during this FAC prudence period on December 6, 2018.
[59] Ex. 203, Mantle Surrebuttal, p. 8.
[60] Ex. 203, Mantle Surrebuttal, p. 8.

participating customers to reduce their bills by allowing Evergy to call targeted curtailment events when market prices are high.[61]

27. Due to the design of Evergy's demand response program, most of the costs are up-front, with minimal additional cost for calling more DRI events.[62] Almost any time an additional event is called, energy will be saved and costs reduced regardless of whether or not it ends up being a peak pricing period.[63] Specifically, any time the cost of energy is more than the cost of the demand response event, calling an event would save energy costs.[64]

28. Calling a demand response event when the cost of energy on the SPP market is above the incremental cost of calling the event itself will save ratepayers money.[65]

V. Conclusions of Law – Issue 1

In addition to the above conclusions of law, the Commission makes the following conclusions.

Q. The programmable thermostat programs and the DRI program tariffs specifically provide that "[c]urtailments may be requested for operational or economic reasons."[66]

[61] Ex. 203, Mantle Surrebuttal, pp. 8-9.
[62] Tr. pp. 187-188; Ex. 203, Mantle Surrebuttal, p. 11.
[63] Tr. pp. 187-188; and 278-279.
[64] Ex. 203, Mantle Surrebuttal, pp. 14-15.
[65] Tr. pp. 278-279; Tr. p. 191; Ex. 203, Mantle Surrebuttal, p. 14-15.
[66] Exhibit 204 Applicable Demand Response Tariff Sheets (Need for Curtailment section of the programmable thermostats and DRI tariffs).

R. The DRI tariff states the purpose of the program is to "reduce customer load during peak periods to help defer future generation capacity additions and provide for improvements in energy supply."[67]

VI. Decision – Issue 1

Evergy had tariffed demand response programs that authorized it to easily call curtailment events. The up-front costs of these programs were being recovered through the DSIM. Yet, Evergy called only two programmable thermostat events and two DRI events in the 2018 curtailment season, and five programmable thermostat events and five DRI events in the 2019 curtailment season. In the summer of 2019, Evergy was compliant with the approved stipulation and agreement setting out that Evergy would call five programmable thermostat events for its MEEIA Cycle 2 extension, but this does not alter Evergy's responsibility to reduce energy costs to its customers when it is prudent to do so.

Further, Evergy knew that calling additional curtailment events outside of its MEEIA program requirements would save customers energy costs because it also had a Market Based Demand Response Program separate from MEEIA that allowed participating customers to reduce their energy costs by allowing Evergy to call targeted curtailment events when market prices were high.[68] This program demonstrates that Evergy was aware it could use events called through its demand response programs but separate from MEEIA to reduce energy costs.[69]

[67] Exhibit 204 Applicable Demand Response Tariff Sheets (Purpose Section of the DRI program tariff); and Ex. 4, File Rebuttal, p. 4.
[68] Ex. 203, Mantle Surrebuttal, p. 8.
[69] Ex. 203, Mantle Surrebuttal, pp. 8-9.

Evergy argues that the operation and implementation of the demand side mechanism is done under the terms of the MEEIA programs and that they implemented the programs in compliance with the MEEIA program design. Thus, Evergy claims its actions, or failure to act, was not imprudent. However, the tariffs authorizing Evergy's demand response programs state that "[c]urtailments may be requested for operational **or economic reasons**."[70] And while the purpose set out in the tariffs for the programmable thermostat programs specifically say that the programs are intended to reduce "system peak load," the DRI program's purpose was different. The DRI program was designed "to reduce customer load during peak **periods**". Thus, the tariffs for the DRI program contemplates more than only a reduction in system peak load.

Regardless of the MEEIA goals, the tariffs provided for curtailment events for economic reasons and for reducing customer load during multiple periods. Additionally, Evergy knew it had other programs that allowed it to use curtailment events to reduce targeted customers' energy costs. Further, the upfront costs of the programs were already paid for through the DSIM and very little additional expense was required to call more events. Therefore, Evergy should have used its demand response programs to reduce energy costs for its customers, regardless of whether the MEEIA goals had been met. By not acting to save money for its customers where it easily could have by calling more programmable thermostat and DRI curtailment events, Evergy acted imprudently.

[70] Ex. 203, Mantle Surrebuttal, p. 7, citing to Evergy tariff sheets. (Emphasis added).

VII. Findings of Fact – Issue 2

Issue 2: Is it more appropriate to address the imprudent implementation of the demand response programs through an ordered FAC adjustment or through the demand side investment mechanism (DSIM) adjustment?

In addition to the above Findings of Fact, the Commission makes the following findings.

29. Evergy has a demand response mechanism that it could have utilized to reduce fuel and purchased power costs.[71]

30. Reduction in fuel and purchased power expenses would have flowed back to customers through the FAC.[72] This is because Evergy recovers 95% of its fuel and purchased power expenses from customers through the FAC's fuel adjustment rate. [73]

31. A DSIM is a recovery mechanism to account for demand-side investments or lost sales due to promoted energy use reduction. The costs of the implementation of the MEEIA programs are recovered through the DSIM.[74]

32. As determined above, Evergy's failure to utilize its programmable thermostat and DRI demand response programs to reduce fuel and purchased power costs was an imprudent decision.

33. Because Evergy participates in the SPP markets, all energy used to serve its retail customers is purchased through the SPP energy market.[75]

[71] Sections 23.08 and 15.08 Business Programmable Thermostat of Evergy Metro and Evergy West's tariffs, respectively.
[72] Tr. p. 179.
[73] Ex. 102, Schedule BJF-d3, pp. 6-7, and Schedule BJF-d5, pp. 6-7.
[74] Tr. pp. 199-200.
[75] Ex. 203, Mantle Surrebuttal, pp. 5-6 and 27.

34. Energy market purchase prices are generally positively correlated with the load in the SPP market, so that as the demand for energy increases, so do the energy market prices.[76]

35. The fuel costs, short term capacity sales revenues, and the SPP Schedule 11 transmission fees, are energy related costs that flow through the FAC not through the DSIM of the MEEIA programs.[77]

36. There were no short-term capacity sales contracts available to be made during the FAC audit period.[78]

37. Savings from the events actually called in 2018 and 2019 by Evergy have flowed through the FAC.[79]

38. Commission Rule 20 CSR 4240-20.093(11) requires that the Staff conduct prudence reviews of an electric utility's costs for its DSIM no less frequently than every twenty-four months. Staff's reports document its review of the prudence of Evergy Metro's and Evergy West's MEEIA Cycle 2 Program Costs, annual energy and demand savings, throughput disincentive (TD), interest for the Review Period, and the over/under collection from the Commission approved MEEIA Cycle 1 Performance Incentive.[80] This MEEIA prudence review for Evergy Metro's and Evergy West's DSIM program costs in File No. EO-2021-0227 addresses costs that flow through the DSIM.

VIII. Conclusions of Law – Issue 2

In addition to the above Conclusions of Law, the Commission makes the following conclusions.

[76] Ex. 203, Mantle Surrebuttal, p. 27.
[77] Ex. 203, Mantle Surrebuttal, pp. 5-6.
[78] Ex. 3, Carlson Rebuttal, pp. 16-17.
[79] Tr. 3, p. 252, Ex. 104, Luebbert Surrebuttal Confidential, p. 6.
[80] Ex. 203, Mantle Surrebuttal, pp. 7-, Ex. 102, Fortson Corrected Direct, Schedule BJF-d4, p. 6 and Schedule BJF-d6, p. 6.

S. An FAC is a tariff provision that allows the utility to recover (or refund after true-up) "prudently incurred fuel and purchased power costs, including transportation."[81]

T. The DSIM is authorized in Section 393.1075, RSMo. This section allows the Commission to authorize the recovery of demand-side investments, but is separate from the FAC, which is an interim energy charge or periodic rate adjustment granted by the Commission under the authority in Section 386.266, RSMo.

IX. Decision – Issue 2

The Commission found that Evergy acted imprudently in the management of its demand response programs. The question now is whether it is appropriate to order an FAC adjustment? Or is it more appropriate to order that adjustment in the MEEIA prudence audit case, File No. EO-2021-0227? The Commission concludes that imprudent energy costs that run through the FAC should be adjusted in the FAC, and imprudent MEEIA costs should be adjusted through the DSIM.

Evergy has at its disposal demand response mechanisms, the programmable thermostat and the DRI programs, which could have reduced fuel and purchased power costs. Evergy did not, however, utilize these programs to reduce fuel costs and the Commission has determined this was an imprudent decision.

Evergy argues that the operation and implementation of the programmable thermostat and DRI programs are done under the terms of the MEEIA programs and, thus, should only be evaluated for prudence in relation to how it implemented the programs in compliance with the MEEIA program design. Whether the MEEIA program was implemented prudently, as that program was designed, is a question for the MEEIA case. However, whether Evergy should have used the demand-side management

[81] Section 386.266, RSMo (2016).

programs that it had put in place to reduce customers' energy costs is appropriately addressed in this FAC prudence review.

The fuel and purchased power costs, and the SPP Schedule 11 transmission fees, are energy related costs that flow through the FAC, not through the DSIM. The MEEIA prudence review addresses the implementation and resource fees of the MEEIA, not the energy costs that are appropriately run through the FAC. Thus, keeping the fuel costs and associated fees in the FAC and keeping the MEEIA implementation and program costs in the DSIM is appropriate.

The Commission finds that resolution of allegations of imprudence regarding SPP fee reduction, energy costs, and bi-lateral capacity sales are properly addressed under the FAC prudence review, File No. EO-2020-0262. The Commission finds that these three allegations of imprudence all implicate increases and decreases in Evergy's fuel and purchased-power costs, which are authorized under Section 386.266, RSMo. Accordingly, after a full review of the facts and the law, the Commission finds these allegations of imprudence are best addressed in this case, File No. EO-2020-0262.

The disputed issues about Evergy's capacity sales contracts with regard to the FAC and the use of capacity sales in modeling the IRP were settled by the stipulation and agreement approved by the Commission on February 10, 2021. Additionally, there were no short-term capacity sales contracts available. Therefore, even though capacity sales affect the energy costs run through the FAC, the Commission has approved the agreement of the parties with regard to modeling in the IRP and need not discuss that issue further. Further, as there were no capacity sales available, Evergy was not imprudent for failing to enter into those contracts.

X. Findings of Fact – Issue 3

Issue 3[82] – What is the amount of the imprudent FAC disallowance?

In addition to the above Findings of Fact, the Commission makes the following findings.

39. Evergy should have known that calling a demand response event when the cost of energy on the SPP market is above the incremental cost of the event itself will save ratepayers money.[83] A reasonable company would have sought to maximize savings for its ratepayers by calling all curtailment events available to it.[84]

40. Evergy knew that the curtailment period ran from June 1 through September 30 of each year.[85]

41. Evergy knew that it could call 15 programmable thermostat program events lasting up to four hours and ten DRI curtailment events lasting up to eight hours over each four-month curtailment season.[86]

42. Evergy knew that the applicable tariffs stated the purpose of the thermostat program was to reduce overall system peak load, while the purpose of the DRI program was to reduce customer load during peak periods.[87] Evergy also knew that the applicable tariffs stated that curtailment events could be called for economic reasons as well as operational reasons.[88]

43. The Commission's approval of the stipulation and agreement for the extension of MEEIA Cycle 2 set a requirement for Evergy to call five events in 2019 to be

[82] This issue is not specifically set out in the issues lists of the parties, but the Commission finds it necessary to decide.
[83] Tr. pp. 278-279; Tr. p. 191; Exhibit 203, Mantle Surrebuttal, p. 14.
[84] Exhibit 204, Applicable Demand Response Tariff Sheets, pp. 2, 4, 12, 14, 17, and 21.
[85] Exhibit 204, Applicable Demand Response Tariff Sheets, pp. 2, 4, 12, 14, 17, and 21.
[86] Tr. pp. 105. 115-116, and 138.
[87] Ex. 204, Applicable Demand Response Tariff Sheets.
[88] Ex. 204, Applicable Demand Response Tariff Sheets.

in compliance with MEEIA demand response requirements. No tariff changes were implemented to reduce the maximum program events.[89]

44. Typically energy load is shifted from the period the event is called to a different period of time that is differently priced.[90]

45. Evergy had the expertise to make reasonable predictions about the best times each month to call curtailment events, given its available information including, historical pricing data showing what the highest prices were during the same period in previous years, past and current weather events and forecasts, market pricing trends, and other information that it uses to call curtailment events.[91] By using the available data to set reasonable thresholds for calling an event, and adjusting those thresholds according to current weather forecasts, the utility would then only have to look at the SPP day-ahead market to see when prices rise above the threshold as Evergy does when predicting system load peaks.[92]

46. Part of Evergy's review process to call events included review of hourly forecasts, Day Ahead market prices, real time market prices, SPP load forecasts, SPP load and pricing trends, weather forecasts, and SPP congestion and generation issues.[93]

47. The DRI program allows Evergy to call ten curtailment events that can last for as long as eight hours each for a total of 80 hours of possible curtailment annually for 2018 and 2019.[94]

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[89] Ex. 15, *Order Approving Stipulation and Agreement,* Exhibit 1 *Stipulation and Agreement Regarding Extension of MEEIA 2 Programs During Pendency of MEEIA 3 Case.*
[90] Tr. 2, pp. 129-130.
[91] Tr. pp. 120 and 279-280; and Ex. 13, File Nos. EO-2020-0227 and EO-2020-0228, Staff Data Request 42.
[92] Tr. p. 90.
[93] Ex. 104, Luebbert Surrebuttal, Schedule JL-s5, p. 6.
[94] Ex. 204, Applicable Demand Response Tariff Sheets.

48. The residential and business thermostat programs allow Evergy to call 15 curtailment events that can last for as long as four hours each for an annual total of 60 hours of possible curtailment annually for 2018 and 2019.[95]

49. It is unlikely that anyone could predict each and every day and hour to call curtailment events that would completely maximize customer energy savings. However, that does not preclude creating some, if not the maximum, customer savings for every curtailment event called.[96]

50. Customer savings do not depend on calling an event on the highest cost day or hour. Customer energy cost savings occur by calling a curtailment event when market prices are above the cost of the demand response programs.[97]

51. A reasonable company would know that if the market price of energy was above the cost of the demand response program, a majority of which have zero costs, it could save energy costs for its customers by calling a curtailment event.[98]

52. The incremental cost of calling additional events under the DRI and the residential and business thermostat programs is small in comparison to the overall cost of the programs. Due to the incentive structure of the MEEIA programs, the costs of administering the DSIM programs are already included in the rates Evergy collects from customers. Thus, additional events could have been called with minimal incremental program costs.[99]

53. A company acting prudently would try to maximize the energy savings benefits from its demand response programs.[100]

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[95] Tr. 3, pp. 281-282.
[96] Tr. 3, pp. 277-278.
[97] Tr. p. 276.
[98] Tr. p. 275.
[99] Tr. 2, pp. 191-192; and Ex. 104, Luebbert Surrebuttal, pp. 4-5.
[100] Tr. p. 286.

54. The day ahead locational marginal price (DA LMP) is used for planning purposes, while the real time locational marginal price (RT LMP) is the actual price paid for energy. Evergy bids its load in the SPP Market on a day-ahead basis. The RT LMP can be influenced by a number of factors creating extreme differences from the DA LMP for the same hour. Evergy's decisions, including whether to call a curtailment event or not, effect whether there is a total benefit or cost in the SPP settlement of each hour.[101]

55. Evergy provided an example of the Evergy West energy price variance between DA LMP and RT LMP for the hours ending 3:00 p.m. through 5:00 p.m., August 6, 2019. The 3:00 p.m. DA LMP was $58.41/MWh and the RT LMP was $1,125.22/MWh; the 4:00 p.m. DA LMP was $72.99/MWh and the RT LMP was $118.07/MWh; and the 5:00 p.m. DA LMP was $65.44/MWh and the RT LMP was $25.34/MWh. If Evergy West had called an event resulting in reduction of 45.93 MW for the hours ending 3:00 p.m. through 5:00 p.m. on August 6, 2019, according to Evergy's example, the savings would have been over $69,000 for that single event. A shift in load from the hour ending 3:00 p.m. to 4:00 p.m. would have resulted in a savings of $1,007.15/MWh ($1,125.22-$118.07) or from 4:00 p.m. to 5:00 p.m. would have resulted in a savings of $92.73/MWh ($118.07-$25.34).[102]

56. The five highest monthly SPP DA LMPs for Evergy Metro and Evergy West transmission nodes for the prudence review period are as set out in Exhibit 13.

57. The day ahead prices will likely not exactly match actual prices, but if the market is functioning, it is highly likely that the day ahead prices will be close to the actual prices.[103]

[101] Ex. 2, Carlson Rebuttal Confidential, pp. 19-20.
[102] Ex. 2, Carlson Rebuttal, p. 19.
[103] Tr. p. 286.

58. Evergy's response to Staff Data Request 42 (Exhibit 13) includes hour ending (HE) designations and the DA LMP for both the Evergy Metro and Evergy West load nodes.[104]

59. Staff workpapers rely on the Evaluation Management and Verification (EM&V) Program Year 2018 Databook reduction in megawatts associated with each demand response program (residential and business programmable thermostats and DRI) event called by Evergy Metro and Evergy West.[105]

60. The EM&V process avoided capacity cost value is provided by Evergy as a given and the benefits customers receive are deemed and perceived. Thus, the realized benefits are never actually quantified so there is no way to know what the realized benefits actually are. Both Staff and OPC rely on this data in formulating their MEEIA and FAC adjustments.[106]

61. Using its conservative method, OPC calculated that Evergy's customers paid $313,056 (95 percent of the total $329,534 energy sales adjustment) more for energy than it should have during the prudence review period.[107] OPC's calculated imprudent energy costs totaled $160,174 for Evergy Metro and $169,360 for Evergy West. OPC calculated increased SPP Schedule 11 fees of $161,123 for Evergy Metro and $270,175 for Evergy West based on Evergy's testimony to correct the year results.[108]

[104] Ex. 13.
[105] Ex. 104, Luebbert Surrebuttal Confidential, Schedule JL-s4, pp. 78-79.
[106] Tr. 2, pp. 196-197; Ex. 104, Luebbert Surrebuttal Confidential, Schedule JL-s4, pp. 78-79; and Ex. 202, Mantle Direct, p. 21.
[107] Ex. 203, Mantle Surrebuttal, p. 12.
[108] Ex. 202, Mantle Direct, p. 4-6 and 21; and Ex. 203 Mantle Surrebuttal, p. 2.

62. OPC witness, Mantle has over 35 years of utility regulatory experience. She retired from the Missouri Public Service Commission as Manager of its Energy Unit before being employed by OPC and is a registered Professional Engineer in the state of Missouri.[109]

63. Evergy did not quantify an adjustment for energy costs because of the difficulty in estimating the amount. Many assumptions and variables affect the calculation. Evergy focused on reducing the system annual peak and did not attempt to calculate energy cost savings.[110]

64. SPP Schedule 11 fees are allocated among SPP transmission customers based on load ratio share, the ratio of an entity's average of their 12 monthly peaks to the average of SPP's twelve monthly peaks expressed as a percentage. Evergy's load ratio share percentage from the previous year is applied to the current year Schedule 11 fees.[111]

65. Only a percentage of SPP Schedule 11 fees are included in the Actual Net Energy Costs (ANEC) since Evergy's FACs contain only a percentage of the Schedule 11 fees as a transmission costs.[112]

66. It is difficult to predict Evergy monthly peaks for June and September because of the changing seasons. The typical Evergy Metro and Evergy West system peaks are in July or August.[113]

67. In calculating its energy sales imprudence adjustments, OPC used the only data that was available.[114]

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[109] Ex. 202, Mantle Direct, pp. 1-2, and Schedule LMM-D-1.
[110] Tr. 2, p. 131.
[111] Ex. 3, Carlson Rebuttal, p. 21
[112] Ex. 202, Mantle Direct, p. 5.
[113] Tr. 2, p.87.
[114] Ex. 203, Mantle Surrebuttal, p. 2.

68. The imprudence amount calculated by OPC utilized the hourly market prices from Exhibit No. 13 multiplied by the amount of demand response megawatts available in those 20 hours.[115]

69. OPC relied on Evergy's response to Staff Data Request 42 (Exhibit 13) and Staff workpapers in the MEEIA cases (File Nos. EO-2021-0227 and EO-2021-0228) to calculate its energy sales and SPP Schedule 11 prudence adjustments. The discovery response included the five highest SPP day-ahead market priced hours at Evergy Metro and Evergy West SPP transmission nodes for the summer of 2018 and 2019 (June through September). OPC multiplied each of those hourly prices by the reduction in megawatts that would result from calling a demand response program event.[116]

70. OPC calculated its proposed energy cost disallowances using the five hours with the highest DA LMPs of each of the four program months. Those 20 hours would only represent a third of thermostat program possible event hours and only 25 percent of DRI possible event hours that Evergy could have called. OPC based its calculation of the energy cost disallowance on the five highest DA LMP hours of each month because that was the data available.[117]

71. OPC's imprudence adjustments were not based on calling the full amount of events allowed under the demand response programs.[118] OPC calculated its energy savings imprudence adjustments for 2018 and 2019 based on fewer than the maximum events and at fewer than the maximum hours allowed per event.[119]

[115] Ex. 203, Mantle Surrebuttal, p. 18.
[116] Tr. 3, p. 273; and Ex. 202, Mantle Direct, p. 21.
[117] Ex. 203, Mantle Surrebuttal, p. 12.
[118] Tr. 3, p. 276.
[119] Tr. 3, p. 282.

72. Comparison of the hours of the curtailment events Evergy called to the five most expensive DA LMP hours of each month (the 20 hours each year used by OPC to calculate its proposed adjustment) indicates that the curtailment event called on July 18, 2019, from 4:00 p.m. to 6:00 p.m. included two of the highest DA LMP five hours in July of 2019.[120]

73. The same information Evergy utilized to predict peak load before calling an event for operational reasons is the information Evergy would need to review to predict when to call a curtailment event for economic reasons.[121]

74. Staff proposed disallowances for imprudence based on energy costs in the MEEIA cases. These disallowances were based on the reduction in megawatts resulting from a called event multiplied by the DA LMP for each hour where the DA LMP was above the average price of the highest 20 hours for 2018 and 2019.[122]

75. The Staff's impact analysis of the failure to call additional events utilized historical data to measure missed opportunities that a reasonable person would have attempted to achieve.[123]

76. Staff supported OPC's estimates for the amount of customer harm.[124]

77. OPC's proposed prudence adjustments to be included on line 10 of the Evergy FAC tariff sheets represent adjustments to the total costs that would have been included in the calculation of ANEC shown on line 1 of the Evergy FAC tariff sheets.[125] The appropriate jurisdictional allocation factors, the 95 percent FAC sharing mechanism,

[120] Ex. 8, Schedule BF-s1, p. 12; Ex. 13; Ex. 104, Luebbert Surrebuttal confidential, p. 11; and Tr. 3, p. 253.
[121] Tr. 3, pp. 279-280.
[122] Ex. 104, Luebbert Surrebuttal Confidential, Schedule JL-s4, pp. 78-79.
[123] Ex. 104, Luebbert Surrebuttal Confidential, p. 5.
[124] Ex. 104, Luebbert Surrebuttal Confidential, p. 15.
[125] Ex. 202, Mantle Direct, pp. 4-5.

and the transmission percentage to any SPP Schedule 11 costs are all included in the FAC calculation before line 10 and would therefore need to be applied to OPC's SPP Schedule 11 prudence adjustment so that only what the customers paid through Evergy's FACs is returned.[126]

78. OPC's FAC imprudence adjustment recommendations do not include interest that would be determined at the time the rate change is implemented.[127] Interest will need to be applied from the time that the costs were incurred through the month that the adjustment will begin to be returned back to customers as required by Section 386.266.5, RSMo.[128]

79. The decision by Evergy whether or not to call a curtailment event was based on information Evergy had at the time and that it was analyzing for making operational decisions as well as economic decisions.[129]

XI. Conclusions of Law – Issue 3

In addition to the above Conclusions of Law, the Commission makes the following conclusions.

U. The Commission's prudence standard, affirmed by the appellate court in *Associated Natural Gas,*[130] is:

> A utility's costs are presumed to be prudently incurred. However, the presumption does not survive "a showing of inefficiency or improvidence[131]." Where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the

[126] Ex. 200, Mantle Direct Highly Confidential, pp. 4-5.
[127] Ex. 202, Mantle Direct, pp. 5-6.
[128] Ex. 200, Mantle Direct Highly Confidential, p. 5.
[129] Ex. 104, Luebbert Surrebuttal Confidential, p. 5; and Tr. 3, p. 279.
[130] *State ex rel. Associated Natural Gas Co. v. Public Service*, 954 S.W.2d 520 (WD 1997).
[131] Improvidence is the state of being improvident. Improvident is defined as not provident, or not foreseeing and providing for the future. Online Merriam Webster Dictionary www.merriam-webster.com/dictionary/improvident.

> applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.
>
> The company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[132]

V. Section 386.266.5(2) and (4), RSMo, states that the Commission may approve rate schedules for interim energy charges or periodic rate adjustment mechanisms provided "that the adjustment mechanism set forth in the schedules . . . [i]ncludes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds; . . . [and] includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate."

W. Evergy is only entitled to recover its "reasonable and prudent costs of delivering cost-effective demand-side programs."[133]

X. It would be inconsistent with the statutory authority provided by Section 393.130.1 for the Commission to make a decision on the recoverability of costs based upon a prudency analysis without reference to the detrimental impact of those practices to the ratepayers.[134]

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[132] *Associated Natural Gas* at 528-529, internal editing and citations omitted.
[133] Section 393.1075, RSMo.
[134] *Associated Natural Gas* at 530.

Y. Evergy's approved FAC tariffs allow the utility to recover 95% of fuel and purchased power costs through the FAC mechanism.[135]

XII. Decision – Issue 3

The parties did not include the calculation of the disallowance amounts as a separate issue on their issues list. However, after determining that an imprudent action or omission has occurred, the Commission must next decide whether there was harm caused to the customers by that imprudent decision and, if so, the amount of that harm must be determined.

Evergy should have known that calling a demand response event when the cost of energy on the SPP market is above the incremental cost of the event itself will save ratepayers money.[136] According to OPC, based on this fact alone, Evergy should have sought to maximize savings for its ratepayers by calling all curtailment events available to it. The company also knew that the curtailment period ran from June 1 through September 30.[137] And, the company knew that it could call 15 residential programmable thermostat program events over the curtailment season.[138] OPC goes on to extrapolate from these facts that in order to call all 15 events over the four-month period, the company would reasonably plan to call four events in each of June, July, and August, and three events in September.

After finding that Evergy was imprudent by not calling more events, the next step is to determine when the events should have been called. A reasonable company would

[135]Tariffs adopted by Evergy Missouri Metro at Evergy Missouri Metro, Inc. d/b/a Evergy Missouri Metro, P.S.C. MO. No. 7, Second Revised Sheet No. 50.12 and Original Sheet No. 50.22, effective December 6, 2018; And tariffs adopted by Evergy Missouri West at Evergy Missouri West, Inc. d/b/a Evergy Missouri West, P.S.C. MO. No. 1, 3rd Revised Sheet No. 127.2 and Original Sheet No. 127.14, effective December 6, 2018.
[136] Tr. pp. 278-279; Tr. p. 191; Exhibit 203, Mantle Surrebuttal, p. 14.
[137] Exhibit 204, pp. 2, 4, 12, 14, 17, and 21.
[138] Tr. pp. 105. 115-116, and 138.

have tried to call events during the peak demand periods of each month or when the SPP day ahead prices were higher or at least when prices were higher than the incremental costs. As Ms. Mantle testified, even though the company would not be expected to call curtailment events on every one of the peaks for each month, or at the hours of the anticipated highest energy costs, it should have still been able to make some reasonable predictions given its available information including, historical pricing data showing what the highest prices were during the same period in previous years, weather forecasts, and market pricing trends.[139] Armed with this information, as OPC suggests, a reasonable company could have set threshold values for when to call an event based on when the demand peaks typically fall in the month and when energy prices were anticipated to be higher. By using the available data to set reasonable thresholds for calling an event, the utility would then only have to look at the projected prices in its modeling or the SPP day-ahead market prices to see when prices rise above the threshold as Evergy already does when predicting load peaks.[140] Only the company has access to the information necessary to do the modeling that Evergy would have done to make these decisions. However, OPC presented the next best alternative, a conservative approach, to determine the amount of the disallowance.

OPC suggests that, assuming Evergy would have done a good job of setting and adjusting its thresholds for calling events, it could have reasonably been expected to call events during the periods of each month that corresponded to the times with the highest prices for energy. OPC recognized that it would not be reasonable to expect Evergy to hit each of the 15 to 20 most expensive hours in each month (assuming events would be

[139] Tr. pp. 120 and 279-280; and Exhibit 13.
[140] Tr. 2, p. 90.

called for all of the eligible DSIM program hours over the four months), therefore it adopted the conservative position that Evergy would have called events for at least some of the highest hours in each month. Therefore, because OPC had limited data available to it, OPC's calculation of the imprudent amount is limited to the five highest cost hours of each month as set out in the DA LMP.

When asked during hearing, Evergy did not provide alternative energy cost adjustments or discrete challenges to OPC's energy cost adjustments. The fact that there is no right amount for the energy cost adjustments because of the many assumptions that must be made does not eliminate the ability, or the need, for adjustments to be made. The Commission, in part, is relying on the knowledge and expertise of OPC's witness, Ms. Mantle, and her explanation of how the energy cost adjustments were calculated. Using this conservative method, OPC calculated that Evergy's customers paid $313,056 more for energy than it should have during the prudence review period.[141] Staff supports OPC's estimates for the amount of customer harm. The Commission also agrees that given the limited data available, and the near impossibility of determining an exact actual cost savings, the method that was presented to the Commission by OPC is the appropriate method for determining the energy cost imprudence disallowance.

The explanation for OPC's SPP Schedule 11 adjustments were less detailed, although relying in part on the same data as the energy cost adjustments (Exhibit 13 and Staff workpapers). The Commission found that a nexus would exist between the SPP determination of Evergy load ratio share percentages applied to SPP Schedule 11 fees and the successful calling of events to reduce peak demand during June through September, the months that the demand response programs are in effect. However, little

[141] Ex. 203, Mantle Surrebuttal, p. 12.

if any narrative was provided to support Staff's SPP Schedule 11 workpaper that OPC relied on. The Commission was not able to determine how or if the proposed SPP Schedule 11 adjustments considered the difficulty in predicting June and September peaks and calling events to effectively impact Evergy's load ratio share in those months. The Commission cannot determine the reasonableness of the adjustments based on the evidence provided.

Evergy argues that its purpose in having the demand response programs was to reduce overall system peak and not to reduce monthly peaks.[142] Evergy points to the tariff language for the programmable thermostat programs that state the purpose of the residential programmable thermostat program is "to help reduce system peak load and thus defer the need for additional capacity."[143] However, the DRI program tariff contains different language under its purpose statement.[144] For the DRI program, the purpose says it is intended "to help reduce customer load during peak **periods** to help defer future generation capacity additions and provide for improvements in energy supply."[145] This language contemplates reducing multiple monthly peaks and not just the system peak.

Evergy also argues that Staff and OPC are merely using hindsight to determine their recommended disallowances. In determining whether the decisions to not call more events were prudent, the Commission did not use hindsight. Rather, the Commission looked at the information that Evergy had or should have had at the time it made the decision. However, to determine if harm was done, and what the amount of the

[142] Tr. pp. 129-136.
[143] Exhibit 204, Sheet 2.32 Purpose, Sheet R-84 Purpose, Sheet R-86 Purpose, and Sheet R-107 Purpose.
[144] Exhibit 204, Sheet 2.09 Purpose and Sheet R-86 Purpose.
[145] Exhibit 204, Sheet 2.09 Purpose and Sheet R-86 Purpose. (Emphasis added.)

disallowance should be, the Commission must look back to the facts and data from the time the decisions were made.

The Commission notes that two of the 2019 highest DA LMP hours coincided with an event that Evergy called and these hours are included in OPC's disallowance calculation. It is reasonable to still include these amounts because the total adjustment represents a very conservative calculation for only 20 hours per year of the 60 to 80 hours that could have been called at little to no additional cost.[146] And, as OPC has pointed out, if Evergy had called all the events available, it would have likely saved customers energy costs with every curtailment event even if the event was not called on a monthly peak. Thus, by using this conservative approach and limiting the disallowance adjustment to only the 20 hours for which data is available, the Commission finds this is a reasonable adjustment.

The Commission finds that due to Evergy's imprudent decision not to utilize its demand response programs to save energy costs for its customers, those customers paid $313,057 more for energy than they should have during the FAC prudence review period. The Commission will order Evergy to refund this amount to its customers with interest as required by Section 386.266.5(4), RSMo, during its next FAC adjustment.

THE COMMISSION ORDERS THAT:

1. Evergy Metro shall refund the imprudence adjustment amount of $152,165 and Evergy West shall refund the amount of $160,892 plus interest as required by Section 386.266.5(4), RSMo, during their next FAC adjustments.

[146] Tr. 3, p. 253.

2. This report and order shall become effective on June 3, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Dippell, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Wholesale Energy Market Rate for a Data Center Facility in Kansas City, Missouri	)))))	**File No. EO-2022-0061**

SECOND AMENDED REPORT AND ORDER

ELECTRIC

§1. Generally

The Commission rejected a proposal regarding securitization to be included in the tariff as unnecessary due to the self-applying nature of Section 393.1705, RSMo (Supp. 2021) which directs that the Commission include in any securitization financing order that the securitization charge is "nonbypassable and paid by all existing and future retail customers receiving electrical service from the electrical corporation."

§1. Generally
§7. Jurisdiction and powers generally
§9. Jurisdiction and powers of the State Commission
§13.1. Energy Efficiency
§14. Rules and regulations

The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the attraction of high load factor customers have a much more consistent load and would improve the load factor, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally
§2. Jurisdiction and powers

The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the attraction of high load factor customers have a much more consistent load and would improve the load factor, and that

the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.

RATES

§21. Discrimination, partiality, or unfairness
§23. Efficiency of operation and management
§28. Large consumption
§40. Revenues
§41. Return
§84. Load, diversity and other factors
§104. Electric and power
§105. Demand, load and related factors
§118. Method of allocating costs
§119. Rate design, class cost of service for electric utilities

The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Approval of a Wholesale Energy Market Rate for a Data Center Facility in Kansas City, Missouri	)))))	**File No. EO-2022-0061**

SECOND AMENDED REPORT AND ORDER

Issue Date: May 18, 2022

Effective Date: May 28, 2022

TABLE OF CONTENTS

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REGULATORY LAW JUDGE: Charles Hatcher

SECOND AMENDED REPORT AND ORDER

The Commission issued its original *Report and Order* on March 2, 2022, which was superseded by an *Amended Report and Order* issued on March 24, 2022. On April 1, 2022, the Office of the Public Counsel filed a motion for rehearing and reconsideration. This *Second Amended Report and Order* addresses the substance of the Economic Development Rider. All requests for rehearing filed regarding the Commission's *Amended Report and Order* issued on March 24, 2022, are moot as this *Second Amended Report and Order* supersedes the *Amended Report and Order*. This *Second Amended Report and Order* will be given a ten-day effective date. All applications for rehearing of this *Second Amended Report and Order* must be filed prior to this effective date.

Procedural History

On November 2, 2021, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (EMW or "the Company") filed a request for approval of a Special High Load Factor Market Rate tariff (MKT or MKT tariff). The Company did not file a proposed tariff for approval; however, it did file a tariff exemplar and a contract exemplar along with the direct testimony of the Company witnesses.

The Commission directed notice be given, and the following parties filed applications and were allowed to intervene: Velvet Tech Services LLC (Velvet), Google LLC, and Midwest Energy Consumers Group (MECG). Velvet is the potential customer underlying EMW's request. As there are no proposed tariff sheets filed, there is no operation of law date for this matter. However, EMW and Velvet have requested expedited treatment, specifically seeking an order issued by March 2, 2022, such that the proposed approval could take effect by March 31, 2022. The request for expedited

treatment was made to accommodate Velvet's internal capital investment schedule for the development site.

The Commission established a procedural schedule leading to an evidentiary hearing. Subsequently, the parties prefiled direct, rebuttal, and surrebuttal testimony. The evidentiary hearing was held January 25 to 26, 2022.[1] The parties filed post-hearing briefs on February 10, 2022, and reply briefs on February 18, 2022.[2]

General Findings of Fact

1. EMW is a certificated Missouri electrical corporation as defined by Subsection 386.020(15), RSMo (Supp. 2021).

2. EMW seeks approval of exemplar MKT tariff wording, and has also provided an exemplar MKT contract under the proposed MKT tariff.[3]

3. The Office of the Public Counsel (OPC) is a party to this case pursuant to Section 386.710(2), RSMo (2016) and by Commission Rule 20 CSR 4240-2.010(10).

4. The Staff of the Commission (Staff) is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

5. In recent years, EMW has been approached by multiple potential customers seeking high load factor facilities in EMW's Missouri jurisdictions. Most of these high load factor potential customers are data centers, and expect electricity loads at or around 150 to 200 megawatts (MW) for each data center.[4]

[1] Transcript Volume (Tr. Vol.) 2 and 3.
[2] The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).
[3] Ex. 2, Ives Direct, p. 2.
[4] Ex. 2, Ives Direct, pp. 3-7.

6. Load is the amount of energy consumed over a period of time. Load factor is the fraction of the average load divided by peak load. Peak load or demand is the highest amount of energy consumed over a measured period of time.

7. One of the potential customers is intervenor Velvet, which served as the model customer for EMW's proposed MKT tariff language.[5]

8. Intervenor Google has expressed interest in a similar tariff in the service area of Evergy Metro, Inc., a sister company to EMW.[6] A single data center would represent a load over twice the size of the Nucor Steel plant, an EMW customer operating under a different special rate tariff, when EMW was authorized to serve it.[7]

9. The Nucor Steel plant was the largest proposed customer for EMW at the time of the Commission's decision in EO-2019-0244.[8]

10. EMW is not requesting approval of the special contract and special rate under the provisions of Section 393.355, RSMo (Supp. 2021).[9]

11. The price of electricity comprises a substantial component of the operating and expense budget for a data center. Thus, competitive electricity rates are very important to these potential customers and represent a primary factor in their decision to choose a location. EMW's MKT energy price will be set by the Southwest Power Pool (SPP) day-ahead hourly price at the EMW node. MKT customers will be required to demonstrate and maintain a load factor throughout the year of .85 or greater.[10]

[5] Ex. 2, Ives Direct, Schedule DRI-3.
[6] *Motion to Intervene and Motion for Expedited Treatment*, filed November 8, 2021, para. 3.
[7] Ex. 2, Ives Direct, p. 3.
[8] EO-2019-0244, *Report and Order*, issued November 13, 2019, Finding of Fact 4.
[9] Ex. 2, Ives Direct, p. 7.
[10] Ex. 2, Ives Direct, pp. 4-8.

12. An average annual load factor of 0.85 means the MKT customer with a peak demand of 100MW would take, on average, 85 MW of electricity every hour of the year.[11]

13. Velvet stated it conducted a multi-state search for a suitable location for a new $800 million enterprise data center. This data center is expected to employ more than 50 direct, full-time employees at an average salary of more than $80,000 per year. Construction and operation of the data center would make a significant economic contribution to the Kansas City area.[12]

14. An MKT contract is not anticipated to be presented to the Commission for approval for several years, perhaps as long as five years, due to the ramp-up of use needed to achieve the full load.[13]

15. Velvet has not made a final decision about whether to locate in the Kansas City area. A key element of Velvet's decision to locate to the Kansas City area is confirmation of the availability of a competitive electricity rate.[14]

16. The customer service charge and the capacity charge that EMW would set forth in the MKT contract would be based on the incremental cost to serve and negotiated amounts to address design risks.[15]

17. Incremental cost is any cost incidental to providing additional load to serve the MKT customer.[16]

18. Approval of an MKT tariff exemplar provides the MKT customer with the ability to leverage the market price for energy with a customer-owned renewable resource

[11] Ex. 201, Mantle Surrebuttal, p. 3.
[12] Ex. 2, Ives Direct, Schedule DRI-3 (Comments of Velvet Tech Services, LLC); Ex. 300, Brubaker Surrebuttal, p. 2.
[13] Ex. 2, Ives Direct, p. 3, and Schedule DRI-3; Tr. Vol. 2, p. 194.
[14] Ex. 2, Ives Direct, p. 7.
[15] Ex. 2, Ives Direct, p. 7.
[16] Ex. 300, Brubaker Surrebuttal, p. 8; EMW Revised Tariff Sheet No. 74.

or portfolio of resources. These high load factor customers tend to be advanced in their use of renewable resources and often manage relatively extensive portfolios to meet their corporate renewable energy goals. As such, they can align pricing of renewable purchases with the retail energy prices they pay for electric service under the proposed market pricing tariff.

19. Attracting high load factor customers such as these high-tech data center loads to Missouri is in the interest of both the State of Missouri, the Kansas City region, and other EMW customers. To the existing EMW customer, these prospective high load factor customers would increase the sales of electricity for the utility, both to the MKT customer itself and to businesses supporting the construction and operation. For the State of Missouri and the Kansas City region, encouraging this load to locate here would promote economic development, improving the tax base and providing new employment opportunities.[17]

20. Approval of an MKT tariff would give EMW another tool to attract new customers to the area.[18]

21. Approval of an MKT tariff would contribute to additional energy sales not only directly to the data center customer, but also to secondary loads resulting from construction and operation of the new facilities. Furthermore, high load factor loads represent desirable loads for the Company. High load factor customers have a much more consistent load than customers currently served by EMW, improving the load factor for the entire utility. When added to the system, a consistent, incremental load minimizes any need for additional generation resources.[19]

[17] Ex. 2, Ives Direct, p. 14.
[18] Ex. 2, Ives Direct, p. 13.
[19] Ex. 2, Ives Direct, p. 13-14.

Findings of Fact Regarding Legality of an MKT Tariff

22. When first built, these data center loads tend to ramp up over a period of years as the data center equipment is installed, tested, and commissioned in phases. Given the load size and load factor, these potential customers are distinct from all other customers served by EMW.[20]

23. The Company proposed that to qualify under the MKT tariff, a customer must have a monthly demand equal to or in excess of 100 MW or is reasonably projected to be at least 150 MW within five years of the new customer first receiving service from the Company, and is able to demonstrate and maintain an average load factor throughout the year of 0.85 or greater.[21]

24. EMW's proposal is designed similar to Tariff Rate 261M offered by the Omaha Public Power District, specifically with regard to customer access to SPP day-ahead market prices.[22]

25. Other non-Missouri utilities that offer market-based rates include Nevada Power Company, Public Service Company of New Mexico, Virginia Electric and Power Company, Northern Indiana Public Service Company, and Alliant Energy.[23]

26. Staff raised four concerns in prefiled testimony as to the legality of the Commission's authority in this matter, but testified at the evidentiary hearing that their concerns regarding the legality of an MKT tariff have been satisfied.[24]

[20] Ex. 2, Ives Direct, p. 3.
[21] Ex. 2, Ives Direct, p. 8.
[22] Ex. 2, Ives Direct, p. 5.
[23] Ex. 300, Schedule MEB-2.
[24] Tr. Vol. 3, pp. 481-486.

27. During the evidentiary hearing, counsel for OPC indicated that it was not opposed to the approval of an MKT tariff.[25]

28. During the evidentiary hearing, counsel for MECG indicated that it was not opposed to the approval of an MKT tariff.[26]

29. It is expected that each prospective customer would have some level of interconnection cost to provide service. It is also expected that these prospective customers may have advanced needs such as redundant feeds. At the time a customer contacts the Company for service under the proposed rate, EMW would evaluate these needs and manage the costs accordingly. Based on EMW's experience with the design case customer, some of these costs would be paid entirely, up front, by the customer and others would be incorporated into the rate design and recovered through future billings.[27]

Findings of Fact Regarding a Hold Harmless Provision

30. The intent of the MKT tariff and subsequent contract is that all additional costs incurred to provide service to the new MKT customer would be paid for by the new MKT customer, and not by existing customers.[28]

31. Approval of the MKT tariff exemplar would establish an incremental cost-based capacity and market energy framework where costs specifically related to serving the MKT customer's energy needs are recovered from the MKT customer.[29]

[25] Tr. Vol. 2, p. 86.
[26] Tr. Vol. 2, p. 98 and 108.
[27] Ex. 2, Ives Direct, p. 9.
[28] Ex. 300, Brubaker Surrebuttal, p. 8.
[29] Ex. 2, Ives Direct, Schedule DRI-3.

32. OPC, Staff, and MECG proposed tariff wording on the issue of including a hold-harmless provision that they adapted from EMW's Special Incremental Load (SIL) tariff used for Nucor.[30]

33. EMW and Velvet's proposed tariff wording on the issue of a hold-harmless provision states, "In the event that any Commission ordered deficiency adjustment is required, the Schedule MKT customer for which there is Commission determined deficiency of revenues to cover the incremental costs to serve will receive a Special High-Load Factor Market Rate Contract rate adjustment sufficient to pay for half the determined cost to serve, with the remainder of the deficiency being borne by the Company."[31] In other words, EMW's shareholders and the involved MKT customer would be responsible for any such revenue shortfall, not ratepayers.

34. EMW and Velvet also proposed tariff wording on the issue of a hold-harmless provision which states, "It is expressly recognized that the Company and the Schedule MKT customer shall have the right to present evidence for the Commission's consideration of other economic benefits as a result of Schedule MKT customers taking service from the Company."[32] This sentence is the central area of disagreement regarding which hold-harmless wording the Commission should authorize.

[30] Ex. 203, Non-unanimous Stipulation and Agreement, Schedule 1, p. 4 of 6, Additional Provisions (continued), para. 3, stating, "Non-MKT customers shall be held harmless from any deficiency in revenues provided by any customer served under this tariff or from any stranded investment or cost(s) associated with serving customers under this rate schedule." And see para. 4., stating "In no event shall any revenue deficiency (that is, a greater amount of the Customer's costs compared to the Customer's revenues) be reflected in the Company's cost of service in any rate proceeding for the duration of service to the Customer(s) during the terms of the contract between Company and Customer served under this tariff."
[31] Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1, p. 5 of 7, Additional Provisions, para. 4.
[32] Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1, p. 5 of 7, Additional Provisions, para. 4.

Findings of Fact Regarding Securitization

35. Wording regarding securitization being placed in the MKT tariff was also in dispute. EMW and Velvet argued that including a securitization provision was premature and unnecessary.[33]

36. OPC, Staff, and MECG included wording in Exhibit 203 that read as follows, "Customer will be subject to any other charge or surcharge including without limitation any charge related to the securitization of Company assets."[34]

Findings of Fact Regarding the Renewable Energy Standard

37. Velvet has committed to having 100% of its load supported by new renewable energy resources located in the SPP footprint.[35]

38. Neither of the proposed MKT tariffs, Exhibit 8 and Exhibit 203, includes any minimum generation or usage requirements for any MKT customer concerning renewable energy.[36]

39. The proposed MKT tariff of EMW and Velvet, Exhibit 8, Schedule 1, states "renewable attributes means Renewable Energy Credits that the MKT customer has retired, or had retired on its behalf, documented annually from an established renewable registry."[37]

40. EMW and Velvet have requested two variances to the Commission's Renewable Energy Standard (RES) and Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) rules. The first variance would exclude an MKT customer's load

[33] Ex. 6, Lutz Surrebuttal, p. 9; Ex. 300, Brubaker Surrebuttal, p. 20.
[34] Ex. 203, Non-unanimous Stipulation and Agreement, Schedule 1, p. 4 of 6, Additional Provisions (continued), para. 5.
[35] Ex. 300, Brubaker Surrebuttal, p. 3; Tr. 142, 307.
[36] Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1; Ex. 203, Non-unanimous Stipulation and Agreement, Schedule 1.
[37] Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1, p. 5 of 7, Additional Provisions, para. 6.

from the definition of "total retail electric sales" under 20 CSR 4240-20.100(1)(W), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then-existing RES requirement that would have been applied to the MKT customer load. The second variance would exclude the RES compliance costs needed to serve an MKT customer from being characterized as part of EMW's RES revenue requirement under 20 CSR 4240-20.100(1)(S)(1), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement that would have been applied to the MKT customer load.[38]

41. EMW and Velvet have also requested that the MKT customer's participation on the system would not affect the rate limitations on other large power customers under Section 393.1655, RSMo (Supp. 2021).[39]

42. A similar limitation regarding treatment under Section 393.1655, RSMo (Supp. 2021) was approved in the Nucor Steel file, EO-2019-0244.[40]

43. OPC's witness, Dr. Marke, calculated that a 150 MW customer, the smallest customer that can be served under the MKT tariff, with an average annual load factor of 85%, equals 1,116,900 megawatt-hours (MWh) (150 times 8,760 hours of the year). Dr. Marke, using EMW's projected load for 2023, calculates that including one MKT customer would raise the RES requirement of EMW 13%.[41]

[38] Ex. 8, Non-Unanimous Stipulation and Agreement, para. 6; *see also* EMW post hearing brief 18-19.
[39] Ex. 8, Non-Unanimous Stipulation and Agreement, para. 7.
[40] Ex. 305, EO-2019-0244, Non-Unanimous Stipulation and Agreement, para. 9.
[41] Tr. Vol. 3, pp. 569-570.

Findings of Fact Regarding the Economic Development Rider

44. EMW offers a discount rate that is authorized by the economic development rider (EDR) statute, Section 393.1640, RSMo (Supp. 2021). The rate is titled Limited Large Customer Economic Development Discount Rider, Schedule PED (Schedule PED).[42]

45. OPC, Staff, and MECG offered a proposed change to the MKT tariff. The proposal would limit an MKT customer's access to the discount provided under Section 393.1640, RSMo (Supp. 2021) and implemented by EMW as Schedule PED to its tariff. The proposed change states, "This special rate is available to Non-Residential customers…who…ha[ve] not accepted a discount under Section 393.1640 in the past five years.[43]

46. Later, an alternate proposed change was offered by OPC, Staff, and MECG that would limit a customer's access to Schedule PED to two years if that customer intends to migrate to the MKT tariff. Time exceeding the two years would trigger a requirement that the customer take service under a standard (non-discount) rate schedule for an equal amount of time. The alternate proposed change also proposes to limit access to the MKT tariff to the lesser of three customers or 500MW.[44]

47. Proponents of the proposed Schedule PED limitations testified that the intent of the EDR discount legislation was to be a "loss leader", and that public policy is to combat free ridership. A loss leader is understood to describe a situation where a new customer is given a discount in order to entice the customer to take service, and when the discount ends that customer stops its free ridership and pays its full cost of service,

[42] Ex. 308, Limited Large Customer Economic Development Discount Rider, Schedule PED.
[43] Ex. 203, Non-Unanimous Stipulation and Agreement, filed January 24, 2022, Availability section.
[44] Ex. 904, OPC, MECG, Staff proposal regarding EDR availability provisions.

which is part of the give-and-take of attracting new load. Free ridership is understood to describe a new customer not paying its full cost of service, but only paying its incremental cost to serve. To stop free ridership, the customer taking service under the discount is thus intended to become a full paying customer after participation in the Schedule PED discount.[45]

48. Evergy, Velvet, and Google opposed the proposed EDR language.[46]

Findings of Fact Regarding Substation Voltage

49. EMW proposes to include language allowing it to offer access to transmission voltage as well as substation voltage customers.[47]

50. Staff objected to the inclusion of the substation voltage language based on concerns of ownership, documenting and parsing portions of the cost of service, and maintaining that existing customers should not be liable for recovery of any stranded plant.[48]

General Conclusions of Law

A. EMW is a public utility, and an electric corporation, as those terms are defined in Subsections 386.020(18) and (43), RSMo (Supp. 2021). By the terms of the statute, EMW is an electrical corporation and is subject to regulation by the Commission pursuant to Sections 393.140 and 386.250, RSMo (2016).

B. Section 393.130.1, RSMo (2016) requires that all charges made or demanded by an electrical corporation for electrical service be just and reasonable and

[45] Tr. Vol. 3, pp. 337-340, 491-493, 499-500, 501-502, 508-509, 560.
[46] Tr. Vol 2, p. 245(Evergy); Tr. Vol. 3, p. 355 (Velvet); Initial Brief of Google LLC, pp. 6-11.
[47] Ex. 8, Non-unanimous Stipulation and Agreement, Schedule 1, p. 1 of 7, "Substation voltage customer – Service is taken directly out of a distribution substation at primary voltage. The customer will own the feeder circuits out of this substation."
[48] Tr. Vol 3, pp. 495-503.

not more than allowed by law or order of this Commission. Subsection 2 of that statute further states:

> No … electrical corporation … shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for … electricity …, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

> No … electrical corporation … shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The courts that have examined this issue have made fact-based inquiries about the statutory proscription against unjust and unreasonable rates and undue or unreasonable preference or disadvantage.[49]

C. Section 393.140(11), RSMo (2016) gives the Commission power to:

> require every … electrical corporation … to file with the commission … schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used to be used, and all general privileges and facilities granted or allowed by such … electrical corporation ….

EMW has appropriately filed an exemplar of the MKT tariff and related contract with the Commission.

D. Section 393.150.1, RSMo (2016) gives the Commission authority to conduct a hearing regarding any "new rate or charge, or any new form of contract or

[49] *For example see, State ex rel. City of Joplin v. Pub. Serv. Comm'n,* 186 S.W.3d 290 (Mo. App. W.D. 2005).

agreement" submitted by a utility, and to make an order regarding the propriety of such rates, charges, contract or agreement.

E. The prohibition against single-issue ratemaking requires the Commission to set rates based on a consideration of all relevant factors rather than a single factor, so that rates are not raised to cover increased costs in one area without a recognition that there may be off-setting cost reductions in other areas.[50]

F. The MKT tariff and related contract concern a new service being offered by EMW and do not change the factors that were considered by the Commission in setting EMW's existing rates, which will not change if the new MKT tariff is adopted.[51]

G. Section 393.355, RSMo (Supp. 2021) gives the Commission authority to approve a special electric rate under specific circumstances, but its terms do not limit any other authority the Commission has to approve a special electric rate under more general authority granted by other statutory provisions.

H. Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony."[52]

I. An administrative agency, as fact-finder, also receives deference when choosing between conflicting evidence.[53]

J. The evidentiary hearing produced two competing proposals for resolution of the case. OPC, Staff, and MECG proposed Exhibit 203 as their nonunanimous stipulation and agreement. EMW and Velvet proposed Exhibit 8 as their nonunanimous stipulation and agreement. Each nonunanimous stipulation and agreement was

[50] *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n,* 397 S.W.3d 441, 448 (Mo. App. W.D. 2013).
[51] *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n,* 397 S.W.3d 441, 448 (Mo. App. W.D. 2013).
[52] *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. W.D. 2009).
[53] *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. S.D. 2009).

objected to, thus by Commission Rule 20 CSR 4240-2.115(2)(D), both stipulations become statements of position of the parties proposing them.

Conclusions of Law Regarding a Hold Harmless Provision

K. The Commission approved a hold harmless provision in EO-2019-0244, Evergy's approval for a Special Rate for Incremental Load Service for Nucor, which is stated as follows:

> The Special Incremental Load Rate will be designed to recover no less than the incremental cost to serve the Customer over the term of the Special Incremental Load Rate Contract. Non-participating customers shall be held harmless from any deficit in revenues provided by any customer served under this tariff.[54]

Conclusions of Law Regarding Securitization

L. The securitization statutes at issue, Sections 393.1700-1715, RSMo (Supp. 2021), provide in pertinent part in Section 393.1700.2(3) as follows,

> (c) A financing order issued by the [C]ommission . . . shall include . . .
>
> d. A requirement that, for so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized utility tariff charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules except for customers receiving electrical service under special contracts on August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this state[.]

Conclusions of Law Regarding the Renewable Energy Standard (RES)

M. The RES statute, Section 393.1030.1, RSMo (Supp. 2021), gives the Commission authority to prescribe by rule a portfolio requirement for all electric utilities to generate or purchase electricity generated from renewable energy resources.

[54] Ex. 301, original sheet No. 157.2, Special Rate, Provisions, and Terms, para. 2.

Specifically, the portfolio requirement shall provide that electricity from renewable energy resources shall constitute a specified percentage of each electric utility's sales.

N. The RES statute, Section 393.1030.1, RSMo (Supp. 2021), states that the portfolio requirements shall apply to all power sold to Missouri consumers whether such power is self-generated or purchased from another source in or outside of this state.

O. The RES statute, Section 393.1030.6, RSMo (Supp. 2021), grants the Commission authority to promulgate rules for the implementation of this section, but only to the extent such rules are consistent with the provisions of that section.

P. The Commission's RES Rule 20 CSR 4240-20.100(1)(W) defines total retail electric sales, or total retail electric energy usage, as meaning the megawatt-hours (MWh) of electricity delivered in a specified time period by an electric utility to its Missouri retail customers as reflected in the retail customers' monthly billing statements.

Q. The Commission's RES Rule 20 CSR 4240-20.100(1)(S)(1) defines the RES revenue requirement as "[a]ll expensed RES compliance costs (other than taxes and depreciation associated with capital projects) that are included in the electric utility's revenue requirement in the proceeding in which the RESRAM is established, continued, modified, or discontinued."

R. The Renewable Energy Standard Rate Adjustment Mechanism (RESRAM), defined in Commission Rule 20 CSR 4240-20.100(1)(P), means a mechanism that allows periodic rate adjustments to recover prudently incurred RES compliance costs and passes-through to customers the benefits of any savings achieved in meeting the requirements of the RES.

S. The Commission's RES Rule that allows for variances, 20 CSR 4240-20.100(11), provides the Commission may grant a variance from any provision of the RES Rule for good cause shown.

Conclusions of Law Regarding the Economic Development Rider

T. Section 393.1640, RSMo, (Supp. 2021), reads in pertinent part as follows:

> 1. . . . The percentage shall be fixed each year of service under the discount for a period of up to five years.
>
> 2. . . . The provisions of this section do not supersede or limit the ability of an electrical corporation to continue to utilize economic development or retention tariffs previously approved by the commission that are in effect on August 28, 2018. If, however, a customer is receiving any economic development or retention-related discounts as of the date it would otherwise qualify for a discount provided for by this section, the customer shall agree to relinquish the prior discount concurrently with the date it begins to receive a discount under this section; otherwise, the customer shall not be eligible to receive any discount under this section.
>
> 3. . . .
>
> 4. This section shall expire on December 31, 2028 . . .

U. The Commission's interpretation of statutes within its purview are entitled to great weight.[55]

V. Commission Rule 20 CSR 4240-2.115(D) states that an objected-to nonunanimous stipulation and agreement becomes a non-binding position statement of the signatory parties.

W. A general rule of statutory construction is the presumption that the General Assembly knows the state of the law when it enacts new laws.[56]

[55] State ex rel. Sprint Mo., Inc. v. Pub. Serv. Comm'n of State, 165 S.W.3d 160, 164 (Mo. banc 2005) (citing Foremost–McKesson, Inc. v. Davis, 488 S.W.2d 193, 197 (Mo. banc 1972)).
[56] *Turner v. School Dist. Of Clayton,* 318 S.W.3d 660, 667-668 (Mo. banc 2010).

X. Generally, one's belief, feeling, understanding, or thought about a matter does not constitute substantial evidence justifying or permitting a finding to that effect.[57]

Conclusions of Law Regarding Substation Voltage

No additional conclusions of law are necessary.

Decision

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

If the Commission is to authorize wording for an MKT tariff, it must find that the rates established in that tariff are just and reasonable, and that they do not establish an undue or unreasonable preference in favor of a particular customer. The Commission finds that the approval of an MKT tariff would not be an undue or unreasonable preference because of the unique characteristics of the customers that would qualify to take service under the MKT tariff. The evidence shows that an MKT tariff for high load factor customers would be in the public interest. The opening of the proposed data center would provide unquestioned economic development benefits to the Kansas City region, and to the State of Missouri as a whole.

The evidence also shows that a qualified MKT tariff customer would be a unique customer of EMW because it would use more than double the electricity of another unique user, Nucor, which was EMW's largest customer when EMW was authorized to serve it

[57] *Dickey Co. v. Kanan,* 537 S.W.2d 430, 433-34 (Mo.App.1976).

in 2019. Approval of an MKT tariff promotes the attraction of other high load factor customers. Further, the MKT customer load would be a consistent load, which when added to the system minimizes any need for added generation. A high load factor customer is desirable as it would increase the sales of electricity, improve the tax base, and provide new employment opportunities. Under these circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the MKT customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.

Decision Regarding Hold Harmless

The Commission finds that the appropriate hold harmless wording should remain consistent with prior hold harmless wording approved for other EMW tariffs by the Commission, but also take into account the particulars of the present case. The Commission finds that hold harmless provision proposed in Exhibit 203 represents the stated intent of EMW and remains consistent with EMW's other hold harmless provisions, and serves as the foundation of the Commission's requirements for a hold harmless provision in this case. Although Exhibit 203 is the foundation, the Commission acknowledges there could be other economic factors at play. Any proceeding involving a deficiency adjustment shall allow any party to argue whether or not specific quantifiable societal or other benefits or costs should be included in that analysis. However, any language regarding the inclusion of such factors should be limited in its applicability to a determination whether a deficiency adjustment is warranted.

Decision Regarding Securitization

The Commission finds that such language is unnecessary due to the self-applying nature of Section 393.1705, RSMo (Supp. 2021) which directs that the Commission include in any securitization financing order that the securitization charge is "nonbypassable and paid by all existing and future retail customers receiving electrical service from the electrical corporation." Thus, the Commission rejects any proposed wording regarding securitization to be included in the MKT tariff.

Decision Regarding the Renewable Energy Standard

The Commission finds that it does have the authority to provide the requested variance from RES counting and RESRAM charges. The RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES.

The objective of the RES is to increase renewable generation or to increase the purchase of electricity generated from renewable resources. Denying the requested variances would, by one calculation, raise the RES requirements of EMW's existing customers by 13%. However, understanding that some MKT customers desire that their load use renewable energy resources above the RES's minimum of 15%, granting the variances would encourage those customers with the largest loads and high load factors, the MKT customers, to increase their own utilization of renewable energy beyond the amount that would have otherwise been applied to that load.

The MKT tariff does not have a requirement for a minimum renewable component. In the case of an MKT customer that does not use renewables, the MKT customer would not qualify to receive such a variance. Restricting the exclusion to apply only when an MKT customer meets or exceeds the minimum RES requirement that would have

otherwise been applied to the MKT customer's load ensures that the purposes of the RES statute are still being met, even with a variance which excludes the counting of what would be EMW's largest customers. The Commission finds that exclusion of the MKT customer's entire load from EMW's total retail electric sales when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the RES requirement that would have been applied to the MKT customer load is consistent with the goals and framework of the RES. The Commission finds good cause to grant the variances as the attraction of high load factor customers because high load factor customers have a much more consistent load and would improve the load factor for EMW, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.

EMW and Velvet's proposed MKT tariff, Exhibit 8, Schedule 1, states that the MKT customer would document annually its Renewable Energy Credit retirements. The Commission will direct this requirement be included in MKT contracts with further detail as to how the Commission will be kept informed of compliance.

Decision Regarding the Economic Development Rider

At issue are two proposed changes to the pending MKT tariff. The proposals, set forth as Exhibit 203, or in the alternate form as Exhibit 904, would limit potential MKT customers' access to taking service under Schedule PED in the five years prior to taking service under the MKT tariff; or in the alternate form, limit potential MKT customers' access to Schedule PED to two years among other requirements. Schedule PED is authorized under Section 393.1640 RSMo (Supp. 2021), known as the EDR statute.

Among other limitations, the EDR statute already sets a five-year limit for qualified customers to take service under Schedule PED.

The existing statutory restrictions include limiting the discount to five years, requiring customers to relinquish other discount tariffs as of the date it qualifies to take service under the EDR discount rate, and the expiration on December 30, 2028, of the EDR statutory authorization. If the legislature had intended to include an additional limit on the EDR statutory authorization, it easily could have added such a limit.

The Commission disagrees with the statutory interpretation of the proponents of the proposal to limit access to the EDR discount. Beyond the statements of the witnesses, there is no evidence to support the position that the EDR discount was intended to be a loss leader, or intended to be treated as such.

The EDR statute makes that discount available under certain circumstances, including, potentially, to MKT customers. The Commission sees no reason to make a blanket decision on MKT customers' eligibility for the EDR discount at this point, but will simply consider EDR applications on a case-by-case basis as it historically has. Based on the facts in evidence, the Commission finds it would be unreasonable to adopt either of the EDR limitations proposed by OPC, Staff, and MECG.

Decision Regarding Substation Voltage

The Commission finds that the expressed concerns over the inclusion of substation voltage offerings should not limit EMW's ability to offer substation voltage. The main concern expressed was whether existing customers would be held harmless for the cost of the substation. The Commission finds this is already addressed above, and thus authorizes the substation voltage as included in Exhibit 8. Any concerns over the allocation of the cost of the substation may be further defined, in accordance with this

order and the MKT tariff, when the appropriate MKT customer contract is submitted to the Commission.

Based on its findings of fact and conclusions of law described in this Amended Report and Order, the Commission will approve the proposed wording included in Exhibit 8, as modified above, for the exemplar MKT tariff of EMW. The Commission makes this decision consistent with its findings of fact and conclusions of law in approving EMW's Special Incremental Load tariff in EO-2019-0244.

As no tariff changes are being approved, the Commission will hold open this file in anticipation of the expected future tariff filing. To meet the requested effective date of Velvet and EMW, the Commission finds it reasonable to make this order effective on less than 30-days' notice.

THE COMMISSION ORDERS THAT:

1. The *Amended Report and Order* issued on March 24, 2022, is withdrawn.

2. The wording as submitted in Exhibit 8, and modified as discussed in the body of this order, is approved as exemplar wording for an MKT tariff.

3. The RES variances requested by EMW and Velvet are granted. The variances are described in Paragraph 38 of the *Report and Order* and are restated below:

   a. The first variance excludes an MKT customer's load from the definition of "total retail electric sales" under 20 CSR 4240-20.100(1)(W), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing RES requirement that would have been applied to the MKT customer load.

   b. The second variance excludes the RES compliance costs needed to serve an MKT customer from being characterized as part of EMW's RES revenue requirement under 20 CSR 4240-20.100(1)(S)(1), when the MKT customer demonstrates it has retired, or had retired on its behalf, Renewable Energy Credits greater than or equal to the then existing

RES requirement that would have been applied to the MKT customer load.

4. This file will remain open to receive the filing of a tariff in compliance with the Commission's order.

5. This *Second Amended Report and Order* shall become effective on May 28, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Hatcher, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Union Electric Company for Authority To Continue the Transfer of Functional Control of Its Transmission System to the Midcontinent Independent Transmission System Operator, Inc.	))))))	**File No. EO-2011-0128**

FOURTH ORDER MODIFYING 2012 REPORT AND ORDER

ELECTRIC

§9. Jurisdiction and powers of the State Commission

The parties asked the Commission to extend authorization for Ameren Missouri to participate in MISO indefinitely rather than for a fixed term. The Commission granted the unopposed motion.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 9th day of June, 2022.

In the Matter of the Application of Union Electric Company for Authority To Continue the Transfer of Functional Control of Its Transmission System to the Midcontinent Independent Transmission System Operator, Inc.	)))))	**File No. EO-2011-0128**

FOURTH ORDER MODIFYING 2012 REPORT AND ORDER

Issue Date: June 9, 2022 Effective Date: July 9, 2022

On April 19, 2012, the Commission issued a report and order that authorized Union Electric Company, d/b/a Ameren Missouri, to continue the transfer of functional control of its transmission system to the Midcontinent Independent System Operator, Inc. (MISO), subject to several specified conditions. The date through which Ameren Missouri has been authorized to participate in MISO has been extended several times, and the company is currently authorized to remain in MISO until May 31, 2024.

On May 18, 2022, Ameren Missouri, the Staff of the Commission, the Office of the Public Counsel, and the Missouri Industrial Energy Consumers (MIEC) filed a joint motion asking the Commission to further modify the 2012 Report and Order. The movants ask the Commission to extend authorization for Ameren Missouri to participate in MISO indefinitely rather than for a fixed term. The movants believe this revision would be appropriate given the substantial benefits Ameren Missouri receives from its membership in MISO, as well as the high financial costs Ameren Missouri would face if it were to leave

MISO. The Commission would retain authority to require further proceedings respecting Ameren Missouri's participation in MISO if it chooses to do so.

The Commission ordered that any party wishing to respond to the joint motion do so by June 1, 2022. No response has been filed.

After considering the matter, the Commission concludes the unopposed joint motion should be granted.

THE COMMISSION ORDERS THAT:

1. Paragraph 2 of the April 19, 2012 Report and Order, as previously modified, is further modified to state as follows:

> Ameren Missouri's authority to continue the transfer of functional control of its transmission system to MISO is granted subject to the following conditions:
>
> A. The Commission approves Ameren Missouri's continued RTO participation in MISO. The extended permission granted in this order is also subject to the provisions of paragraphs J and K of this order.
>
> B. Ameren Missouri shall acknowledge that the Service Agreement's primary function is to ensure that the Commission continues to set the transmission component of Ameren Missouri's rates to serve its Bundled Retail Load. Consistent with Section 3.1 of the Service Agreement and its primary function, to the extent that the FERC offers incentive "adders" for participation in an RTO or in an ICT to the rate of return allowed for providing Transmission Service, as

that term is defined in the Service Agreement, to wholesale customers within the Ameren zone, such incentive adders shall not apply to the transmission component of rates set for Bundled Retail Load by the Commission.

C. Currently, FERC requires Bundled Retail Load served by MISO Transmission Owners to take Transmission Service under the MISO's Energy Markets Tariff ("EMT"). If, at some point, Ameren Missouri is not required to take Transmission Service for Bundled Retail Load under the EMT, the Service Agreement shall be terminated concurrently with the point in time when Ameren Missouri is no longer required to take Transmission Service for Bundled Retail Load under the EMT. Termination of the Service Agreement under this provision shall not affect Ameren Missouri's membership participation status in the MISO and the Commission shall continue to have jurisdiction over the transmission component of the rates set for Bundled Retail Load. As a participant in the MISO, Ameren Missouri may remain subject to charges from the MISO for Bundled Retail Load under the EMT that are assessed ratably to all load- serving utilities who are participants in the MISO, but who are not taking Transmission Service for their Bundled Retail Load under the EMT. No ratemaking treatment has been adopted for these changes.

D. The Service Agreement (unless it is terminated pursuant to its terms) shall continue in its current form; provided that the Commission may rescind its approval of Ameren Missouri's participation in the MISO and may require Ameren Missouri to withdraw from participation in the MISO if the Commission determines withdrawal is in the public interest for reasons that include, but are not limited to, the following:

(i) The issuance by FERC of an order, or the adoption by FERC of a final rule or regulation, binding on Ameren Missouri, that has the effect of precluding the Commission from continuing to set the transmission component of Ameren Missouri's rates to serve its Bundled Retail Load; or

(ii) The issuance by FERC of an order, or the adoption by FERC of a final rule or regulation, binding on Ameren Missouri, that has the effect of amending, modifying, changing, or abrogating in any material respect any term or condition of the Service Agreement previously approved by the Commission and by FERC.

Ameren Missouri shall immediately notify the Stakeholders if Ameren Missouri becomes aware of the issuance of any order, rule, or regulation amending, modifying, changing, or abrogating any term or condition of the Service Agreement. Any stakeholder is free

to make a filing with the Commission as a result of an action by FERC as described in this provision.

E. Unless ordered otherwise by the Commission, any order issued by the Commission that, on a basis provided for in paragraph D(i) or D(ii), terminates the Commission's approval of Ameren Missouri's participation in the MISO shall be effective when Ameren Missouri has re-established functional control of its transmission system as a transmission provider or transfers functional control to another entity depending on further orders of the Commission and the FERC.

F. If Ameren Missouri desires to securitize the revenues associated with its transmission system, it shall obtain additional prior permission and approval from the Commission.

G. If Ameren Missouri decides to seek any fundamental change in its membership participation or membership status in the MISO, it shall seek prior approval from the Commission no later than five business days after its filing with the FERC for authorization of that change.

H. For transmission facilities located in Ameren Missouri's certificated service territory that are constructed by an Ameren affiliate and that are subject to regional cost allocation by MISO, for ratemaking purposes in Missouri, the costs allocated to Ameren Missouri by MISO shall be adjusted by an amount equal to the difference between: (i) the annual revenue requirement for such facilities that

would have resulted if Ameren Missouri's Commission-authorized ROE and capital structure had been applied and there had been no construction work in progress (CWIP) (if applicable), or other FERC Transmission Rate Incentives, including Abandoned Plant Recovery, recovery on a current basis instead of capitalizing pre-commercial operations expenses and accelerated depreciation, applied to such facilities and (ii) the annual FERC-authorized revenue requirement for such facilities. The ratemaking treatment established in this provision will, unless otherwise agreed or ordered, continue as long as Ameren Missouri's transmission system remains under MISO's functional control.

I. Ameren Missouri shall provide the Stakeholders a presentation on the current and near-term plans for Ameren (Ameren Missouri, ATX, and ATXI) regarding local and regional transmission construction in Missouri annually while it participates in MISO at a mutually convenient time and location.

J. Ameren Missouri shall convene a Stakeholder meeting should an event(s) or circumstance(s) occur in the MISO footprint or that of an adjacent RTO of which Ameren is aware that Ameren Missouri believes significantly affects its position in MISO. Ameren Missouri shall apprise Stakeholders by email of such events that may affect its position in MISO. Any Stakeholder can request such a meeting be convened for the same reason. If, because of such a meeting,

Ameren Missouri agrees that a further filing respecting its RTO participation or operation as an ICT should be made, it may make such a filing and it may include a cost-benefit study with its filing if it believes a cost-benefit study is warranted. If because of such a meeting Ameren Missouri does not agree that such a filing should be made or that such a filing should be made but that a cost-benefit study is not warranted, any Stakeholder can petition the Commission to enter, after hearing, its order requiring a further filing with or without a cost-benefit study.

K. Any cost-benefit study to be submitted, pursuant to a Commission order under paragraph J, will at a minimum examine continued participation in MISO versus participation in SPP and continued participation in MISO versus operation as an ICT for a range of years of not less than five (5) nor more than twenty (20) years. With respect to any such cost-benefit study, Ameren Missouri shall work with Staff, Public Counsel, and MIEC, and give them substantive input regarding the development of the specific methodology, inputs, outputs, and other features to be included in such a cost-benefit study. Ameren Missouri shall also advise and update MISO and SPP regarding the cost-benefit study. If any difference of opinion regarding the scope, particular details or preliminary assumptions that are necessary to and part of such a cost-benefit study arises, Ameren Missouri shall ultimately have responsibility

for, and the burden of presenting a study in support of whatever position it deems appropriate and necessary at the time of its filing respecting its further RTO participation or operation as an ICT. Accordingly, Ameren Missouri is entitled to maintain a level of independence and control of any such cost-benefit study, while other parties retain their right to oppose Ameren Missouri's positions or to provide alternative positions. Subject to any applicable privilege recognized by law and the provisions of the Commission's rule regarding confidential information, Staff, OPC, and MIEC shall be given meaningful and substantial access to data necessary for, and used in, preparing any such cost-benefit study, and shall be given the opportunity to have meaningful input in the preparation of any such cost-benefit study. Furthermore, Ameren Missouri shall advise and update the MISO and SPP regarding such a cost-benefit study. Ameren Missouri will also provide regular reports regarding the progress and, if requested, reasonable details of the study to any party to this case that requests such updates or information. To maintain its independence and control of such cost-benefit study, Ameren Missouri (or Ameren Services on its behalf) shall act as the project manager for such cost-benefit study and shall engage and direct the work of Ameren Missouri or Ameren Services employees or consultants assigned or retained to perform the cost-benefit study.

L. For purposes of the conditions imposed in this order, the Stakeholders are defined as Union Electric Company, d/b/a Ameren Missouri, the Staff of the Commission, the Midcontinent Independent System Operator, Inc., the Missouri Industrial Energy Consumers, the Office of the Public Counsel, The Empire District Electric Company, the Southwest Power Pool, Inc., and the Missouri Joint Municipal Electric Utility Commission.

M. Any person or party who receives confidential or highly confidential information as part of the process established in this order shall handle that information in accordance with Commission Rule 20 CSR 4240-2.135.

2. This order shall be effective on July 9, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).
Rupp, C., dissents.

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Assessment Against the Public Utilities in the State of Missouri for the Expenses of the Commission for the Fiscal Year Commencing July 1, 2022	))))	**File No. AO-2022-0346**

ASSESSMENT ORDER FOR FISCAL YEAR 2023

PUBLIC UTILITIES

§5. Obligation of the utility

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its Office in Jefferson City on the 15th day of June, 2022.

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, 2022	))))	**Case No. AO-2022-0346**

ASSESSMENT ORDER FOR FISCAL YEAR 2023

Issue Date: June 15, 2022 Effective Date: July 1, 2022

Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year commencing July 1, 2022. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo and amount to $24,036,223. Within that total, the Commission estimates the expenses directly attributable to the regulation of the six groups of public utilities: electrical, gas, heating, water, sewer and telephone, which total for all groups $11,574,105. 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 $12,462,118.

The Commission estimates that the amount of Federal Gas Safety reimbursement will be $600,000. The unexpended balance in the Public Service Commission Fund in the hands of the State Treasurer on July 1, 2022, is estimated to be $3,202,094. The Commission deducts these amounts and estimates its Fiscal Year 2023 Assessment to be $20,234,129. 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 2021, 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	$ 11,375,618
Gas	$ 5,403,127
Steam/Heating	$ 98,900
Water & Sewer	$ 2,045,749
Telephone	$ 1,310,735
Total	$ 20,234,129

The Commission allocates a proportionate share of the $20,234,129 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, 2022. The assessment shall be due and payable on or before July 15, 2022, or at the option of each public utility, it may be paid in equal quarterly installments on or before July 15, 2022, October 15, 2022, January 15, 2023, and April 15, 2023. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue for deposit.

All checks shall be made payable to the Director of Revenue, State of Missouri; however, these checks must be sent to:

Missouri Public Service Commission
Budget and Fiscal Services Department
P.O. Box 360
Jefferson City, MO, 65102-0360

So that the assessment is effective at the beginning of the 2023 Fiscal Year for the state of Missouri, the Commission finds it reasonable for this order to become effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The assessment for fiscal year 2023 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, 2022.

4. Each public utility shall pay its assessment as set forth herein.

5. The Budget and Fiscal Services Department shall deliver checks to the Director of Revenue for deposit.

6. This order shall become effective on July 1, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of The Empire District Gas Company's d/b/a Liberty Request to File Tariffs to Change its Rates for Natural Gas Service	))))	**File No. GR-2021-0320** Tariff No. YG-2022-0040

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

The Commission can treat a non-unanimous stipulation and agreement as unanimous if no party files a timely objection.

GAS

§18. Rates

The language in Section 393.310.4 RSMo which states "including related transportation service costs," and "plus an aggregation and balancing fee to be determined by the commission" does not mean that school districts are entitled to transportation service "at cost."

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of The Empire District Gas Company's d/b/a Liberty Request to File Tariffs to Change its Rates for Natural Gas Service	))))	**File No. GR-2021-0320** Tariff No. YG-2022-0040

REPORT AND ORDER

Issue Date: June 23, 2022

Effective Date: July 3, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of The Empire District Gas Company's d/b/a Liberty Request to File Tariffs to Change its Rates for Natural Gas Service	))))	**File No. GR-2021-0320** Tariff No. YG-2022-0040

REPORT AND ORDER

TABLE OF CONTENTS

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SYMMETRY ENERGY SOLUTIONS, LLC:

Douglas Healy and Terry M. Jarrett, 3010 E. Battlefield, Suite A, Springfield, MO 65804.

REGULATORY LAW JUDGE: Ronald D. Pridgin

REPORT AND ORDER

I. Procedural History

A. Tariff Filings, Notice, and Intervention

On August 23, 2021, The Empire District Gas Company d/b/a Liberty filed tariff sheets designed to implement a general rate increase for utility service. The tariff sheets bore an effective date of September 22, 2021. In order to allow sufficient time to study the effect of the tariff sheets and to determine if the rates established by those sheets are just, reasonable, and in the public interest, the tariff sheets were suspended until July 20, 2022.

The Commission directed notice of the filings and set an intervention deadline. The Commission granted intervention requests from Midwest Energy Consumers Group, Symmetry Energy Solutions, LLC and Missouri School Boards' Association.

B. Local Public Hearings

The Commission conducted two virtual local public hearings.[1]

C. Stipulation and Agreement

On April 12, 2022, Liberty, the Staff of the Commission (Staff), the Office of the Public Counsel (OPC), and Midwest Energy Consumers Group (MECG) filed a Stipulation and Agreement (Stipulation). The Stipulation resolved all revenue requirement and rate design issues except for issues raised by the Missouri School Board Association (MSBA).

The Stipulation allows for a $1 million rate increase, of which roughly $700,000 would come from residential ratepayers. Liberty has about 38,000 residential customers.

[1] Tr. Vols. 1-2.

That $700,000 rate increase for 38,000 residential customers means about an $18 annual increase, or a $1.50 per month increase, for an average residential customer.

Although the Stipulation was not signed by all parties, the Commission can treat it as if it were unanimous because no party filed a timely objection.[2] The Commission has reviewed the Stipulation, and finds it reasonable. Thus, the Commission will approve the Stipulation.

D. Evidentiary Hearing

The evidentiary hearing was held on April 25, 2022.[3]

E. Case Submission

During the evidentiary hearing held at the Commission's offices in Jefferson City and via WebEx, the Commission admitted the testimony of four (4) witnesses, received nine (9) 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 June 2, 2022, and the case was deemed submitted for the Commission's decision on that date.[4]

II. General Matters

A. General Findings of Fact

1. Liberty is a corporation organized and existing under the laws of the State of Kansas, with its principal office located at 602 Joplin Street, Joplin, Missouri 64802.

[2] Commission Rule 20 CSR 4240-2.115(2).
[3] Tr. Vol. 3.
[4] "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 20 CSR 4240-2.150(1).

Liberty is a wholly-owned subsidiary of The Empire District Electric Company and an indirect subsidiary of Liberty Utilities Co.[5]

2. Liberty is a "gas corporation" and a "public utility" as those terms are defined in Section 386.020 RSMo. Liberty is thus subject to the jurisdiction of the Commission.[6]

3. OPC is a party to this case pursuant to Section 386.710(2), RSMo[7], and by Commission Rule 20 CSR 4240-2.010(10).

4. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

5. Liberty provides natural gas service to approximately 44,000 customers in the Missouri counties of: Cooper, Henry, Johnson, Lafayette, Morgan, Pettis, Platte, Ray Saline, Vernon, Chariton, Grundy, Howard, Linn, Atchison, Holt, Nodaway, Andrew and Livingston.[8]

6. Approximately 87% of those customers are residential customers.[9]

7. Liberty's distribution system is comprised of approximately 1,038 miles of mains and 42,938 active service lines.[10]

8. 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

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

weight and credibility decisions throughout this order as to specific items of testimony as is necessary.[11]

9. 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.[12]

B. General Conclusions of Law

Liberty is a "gas corporation" and a "public utility" as defined in Sections 386.020(18) 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-er jurisdiction over Liberty'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, Liberty bears the burden of proving that its proposed rate increase is just and reasonable. In order to carry its burden of proof, Liberty must

[11] 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).

[12] 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).

meet the preponderance of the evidence standard.[13] In order to meet this standard, Liberty must convince the Commission it is "more likely than not" that Liberty's proposed rate increase is just and reasonable.[14]

III. Disputed Issues

Should the Commission approve the recommendations filed on behalf of the MSBA?

a.*Should the Commission modify Liberty's Aggregation, Balancing, and Cashout Charges in this case?*

b.Should the Commission establish a section within Liberty's tariff or standalone rate schedule applicable only to special statutory provisions for School Transportation Program? If so, when should a revised tariff be submitted to the Commission?

A. Findings of Fact

16. MSBA is a 501(c)(6) not-for-profit corporation representing 388 schools and school districts in Missouri as a trade association with approximately 2,000 individual school locations, several of which have multiple natural gas meters or accounts.[15]

17. MSBA sponsors a statewide aggregate natural gas purchasing program which enables schools to take services under all Missouri gas corporations' School Transportation Program (STP) tariffs.[16]

[13] *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).
[14] *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).
[15] Ex. 300, p. 4.
[16] Ex. 300, p. 4.

18. Aggregation pools are treated as a single transportation customer for the purpose of balancing. All eligible school entities that participate in the school aggregation program are in pools.[17]

19. An aggregator is a gas supplier or marketer that contracts with transportation customers to aggregate and supply natural gas for a pool. An aggregator estimates how much gas will be needed by the pool, and then arranges supply out of its own resources or from gas it purchases.[18]

20. Balancing is a process by which a transportation service provider (TSP) and a shipper of gas reconcile the differences between the amounts of gas the TSP receives and delivers for the shipper.[19]

21. Balancing is important because natural gas pipelines and gas corporations must assure that the amount of gas they receive into their transmission or distribution systems closely matches the amount they deliver to customers.[20]

22. Transportation customers' imbalances could cause Liberty to buy additional gas on the spot market, inject or withdraw gas from storage, or adjust other supply purchases. All of these actions could cause the sales customers' gas costs to be higher than they otherwise would have been if the costs associated with the transportation customers' imbalances are not recovered from the transportation customers.[21]

23. Transportation customers are responsible for balancing. All of the gas pipelines that transport gas to Liberty have balancing provisions in their tariffs.

[17] Ex. 100, p. 3.
[18] Ex. 100, p. 3.
[19] Ex. 100, p. 3.
[20] Ex. 100, p. 4.
[21] Ex. 100, p. 4.

Specifically, these pipelines are ANR Pipeline Company, Panhandle Eastern Pipe Line Company ("PEPL"), and Southern Star Central Gas Pipeline, Inc. ("SSC").[22]

24. All Missouri gas corporations' tariffs have balancing provisions for transportation customers. Other than Spire Missouri, all Missouri gas corporations, including Liberty, use cash-out balancing for schools.[23]

25. Cash-out balancing is administratively simple compared to other methods of balancing. In addition, cash-outs provide an economic incentive to balance. The Commission has previously found cash-out balancing a just and reasonable way to resolve imbalances of school aggregation pools and other transportation customers.[24]

26. MSBA proposes that the Commission order Liberty to adopt the carry-over method of balancing instead of the current cash-out method. The carry-over method is currently only used by Spire Missouri and requires school aggregation pools to balance by adjusting nominations in the month following the month in which an imbalance occurs.[25]

27. Liberty's system is sufficiently different from Spire Missouri's system that the carry-over method of balancing would be inappropriate for Liberty. For example, Spire Missouri operates extensive distribution systems with high-pressure lines that provide it with greater flexibility of managing line pack than that of a smaller utility like Liberty.[26]

28. Line pack is the amount of natural gas in a distribution or transmission system. Natural gas is compressible, so as the pressure in a gas line goes up or down, so does the line pack. A gas line that can operate at a higher pressure can have more

[22] Ex. 100, p. 5.
[23] Ex. 100, p. 5.
[24] Ex. 100, p. 6.
[25] Ex. 100, pp. 5-6.
[26] Ex. 100, p. 7.

line pack than a line of the same size that is limited to a lower pressure. Similarly, a gas line that can operate with broader range of pressures will have more flexibility in the amount of line pack it holds.[27]

29. Also, Spire Missouri (East) has on-system storage, which no other Missouri gas corporation has. This provides Spire Missouri with some capacity to respond to imbalances without resorting to supply adjustments or storage on interstate pipelines.[28]

30. In addition, Spire Missouri (West) has schools within its pools on different meter reading schedules, making it difficult to properly determine imbalances and calculate cash-outs.[29]

31. Multipliers are intended to encourage transportation customers and aggregators to closely balance their systems. That is done by charging a higher price for increasingly severe under-deliveries and crediting customers decreasing prices for more severe over-deliveries.[30]

32. Liberty passes on the multipliers that apply to its imbalances on upstream pipelines to its transportation customers. Each of these pipelines has its own schedule of cash-out multipliers, but Liberty applies the least severe of them to all of its service area.[31]

33. The Commission established Liberty's charges for aggregation, balancing, and cash-out in File No. GR-2009-0434.[32]

[27] Ex. 100, p. 7.
[28] Ex. 100, p. 7.
[29] Ex. 100, p. 7.
[30] Ex. 100, p. 15.
[31] Ex. 100, p. 16.
[32] Ex. 100, p. 12.

34. Liberty's costs for those services have increased since the Commission's order in File No. GR-2009-0434, but Liberty has not asked to increase its charges to cover those cost increases.[33]

35. A separate tariff is not required nor necessary to implement a school aggregation program. No law requires a stand-alone tariff, and one is not practical in this case.[34]

36. A new tariff is likely to have complex interactions with the existing transportation tariff and possibly other tariff provisions, and these may result in unintended consequences if the tariff is not thoroughly reviewed.[35]

B. Conclusions of Law

Section 393.310 RSMo states:

> 3. Each Missouri gas corporation shall file with the commission, by August 1, 2002, a set of experimental tariffs applicable the first year to public school districts and applicable to all school districts, whether charter, private, public, or parochial, thereafter.
>
> 4. The tariffs required pursuant to subsection 3 of this section shall, at a minimum:
>
> (1) Provide for the aggregate purchasing of natural gas supplies and pipeline transportation services on behalf of eligible school entities in accordance with aggregate purchasing contracts negotiated by and through a not-for-profit school association;
>
> (2) Provide for the resale of such natural gas supplies, including related transportation service costs, to the eligible school entities at the gas corporation's cost of purchasing of such gas supplies and transportation, plus all applicable distribution costs, plus an aggregation and balancing fee to be determined by the commission, not to exceed four-tenths of one cent per therm delivered during the first year; and

[33] Ex. 100, pp. 12-13.
[34] Ex. 100, pp. 17-18.
[35] Ex. 100, p. 18.

(3) Not require telemetry or special metering, except for individual school meters over one hundred thousand therms annually.

C. Decision

The Commission concludes it should not modify Liberty's aggregation, balancing, and cash-out charges. The Commission further concludes it should not order a standalone tariff for the School Transportation Program.

The Commission finds that the language in Section 393.310.4 RSMo which states "including related transportation service costs," and "plus an aggregation and balancing fee to be determined by the commission" contradicts MSBA's argument that it is entitled to transportation service from Liberty "at cost." Further, Liberty's costs have increased since the Commission set the aggregation, balancing, and cash-out charges in File No. GR-2009-0434.

MSBA's argument that it did not get notice of File No. GR-2009-0434 also fails. The Commission sent its customary notice about that case, and received applications to intervene. MSBA cites no law stating it was entitled to actual notice. Further, its argument is an impermissible collateral attack on the Commission's order in that case.

The Commission encourages Liberty to file a standalone tariff for its School Transportation program no later than its next general rate case. Such a filing should give parties enough time to study the tariffs impact on Liberty's other tariffs and programs.

IV. Decision

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, Liberty provides safe and adequate service, and the Commission concludes, based upon its review of the whole record, that the rates approved as a result of this order 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 Liberty's utility plants in proper repair for effective public service and provide to Liberty'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.[36] In order that this case can proceed expeditiously, the Commission will make this order effective on July 3, 2022.

THE COMMISSION ORDERS THAT:

1. The Stipulation is approved, and its signatories are ordered to comply with its terms.

2. The tariff sheets submitted on August 23, 2021, assigned Tariff No. YG-2022-0040 are rejected.

3. Liberty is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order.

4. Liberty shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 20 CSR 4240-10.060 no later than June 29, 2022.

[36] Section 386.490.3, RSMo.

5. This Report and Order shall become effective on July 3, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application by the City of Poplar Bluff, Missouri and Ozark Border Electric Cooperative for Approval of Minor Modifications and Extension of a Territorial Agreement Involving Three Areas in Butler County, Missouri	)))))	**File No. EO-2022-0264**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

ELECTRIC

§9. Jurisdiction and powers of the State Commission
§11. Territorial agreements
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.

§11. Territorial agreements
The Commission may approve a territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing
§24. Procedures, evidence and proof
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 29th day of June, 2022.

In the Matter of the Joint Application by the City of Poplar Bluff, Missouri and Ozark Border Electric Cooperative for Approval of Minor Modifications and Extension of a Territorial Agreement Involving Three Areas in Butler County, Missouri	)))))	**File No. EO-2022-0264**

REPORT AND ORDER APPROVING TERRITORIAL AGREEMENT

Issue Date: June 29, 2022 Effective Date: July 28, 2022

This order approves a new territorial agreement between the City of Poplar Bluff, Missouri (Poplar Bluff) and Ozark Border Electric Cooperative (Ozark Border) (collectively, the Applicants) replacing the prior territorial agreement in force between them. The new agreement incorporates most of the terms of the prior agreement, but extends the relationship between the Applicants for a period of thirty years and makes minor modifications to some aspects of the prior agreement.

Procedural History

On March 30, 2022, the Applicants filed their *Joint Application*, and on March 31 the Applicants moved for a waiver of the notice requirements of 20 CSR 4240-4.017.1, pursuant to 20 CSR 4240-4.017.1(D), affirming that they had not had contact with the Commission about the subject to the application within 150 days before filing the application. On March 31, the Commission issued its Order Directing Notice, Setting Intervention Deadline, and Directing Staff Recommendation. On June 3, the Applicants filed a joint motion for leave to file an amended joint application with the new territorial agreement (styled “2022 Territorial Agreement”) attached. The Commission granted the

joint motion on June 3. On June 17, the Commission's Staff filed its *Staff Recommendation*, recommending approval of the 2022 Territorial Agreement.

Findings of Fact

1. Poplar Bluff is a municipal corporation of the State of Missouri and operates a municipally owned electric utility system known as Municipal Utilities. Municipal Utilities' principal place of business is at 1902 Sunset Drive, Poplar Bluff, Missouri. Poplar Bluff is a political subdivision of the state of Missouri and is generally not subject to regulation by the Commission, but is subject to the jurisdiction of the Commission for the purpose of seeking approval of a territorial agreement per Sections 91.025 and 394.312, RSMo.

2. Ozark Border is a rural electric cooperative organized under Chapter 394 RSMo (2020) to provide electric service to its members in all or parts of Missouri including Butler County, in which lies the designated areas that are the subject of the Application. Ozark Border's principal place of business is 3281 S. Westwood Blvd, Poplar Bluff, Missouri. Although the Commission has limited jurisdiction over rural electric cooperatives, Ozark Border is subject to the jurisdiction of the Commission for the purposes of this territorial agreement under Section 394.312 RSMo.

3. The Commission previously approved a territorial agreement between the parties for a period of twenty years under Case No. EO-98-143, which was clarified by stipulation in case number EO-2003-0452 (Prior Agreement). The Prior Agreement was extended for an additional period of five years under Case No. EO-2017-0358.

4. Subject to the approval of the Commission pursuant to Section 394.312, RSMo, the Applicants have entered into an agreement (styled "2022 Territorial Agreement") that extends their Prior Agreement for a period of thirty years and modifies their existing electric service boundaries.

5. The 2022 Territorial Agreement incorporates all of the same legal terms of the Prior Agreement, and retains a three-zone concept in which the respective rights of Poplar Bluff and Ozark Border for the provision of retail electric service to present and future structures is set forth. The 2022 Territorial Agreement makes minor modifications to the zones, changing some areas previously established as Zone 2 into Zone 1. The boundaries of Zone 3 remain unchanged.

6. No existing customers of either Poplar Bluff or Ozark Border will have their electric service changed by the proposed 2022 Territorial Agreement.

7. Neither Poplar Bluff nor Ozark Border had any communication with the Commission about the subject of the application within one hundred fifty days before filing the application.

8. No persons have sought intervention or requested a hearing, nor have the Applicants responded to Staff's Recommendation.

Conclusions of Law

A. Under Section 394.312.1, RSMo, the Commission has jurisdiction over territorial agreements between municipally owned utilities and rural electric cooperatives, thus the Applicants are subject to the Commission's jurisdiction in this case. [1]

B. Under Sections 394.312.3 and 5, RSMo, the Commission may approve the territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.

[1] Section 394.312.4, RSMo, states, in relevant part: "[B]efore becoming effective, all territorial agreements entered into under the provision of this section, including any subsequent amendments to such agreements, or the transfer or assignment of the agreement or any rights or obligation of any party to an agreement, shall receive the approval of the public service commission by report and order. . . ."

C. Under Section 394.312.5, RSMo, the Commission must hold an evidentiary hearing on a proposed territorial agreement unless an agreement is made between the parties and no one requests a hearing.

D. Commission Rule 20 CSR 4240-4.017.1 requires that any person intending to file a case before the Commission file notice of the intended filing at least sixty days before the case is filed. Commission Rule 20 CSR 4240-4.017.1(D) provides that the Commission may waive the sixty-day notice filing requirement for good cause, including the affirmation of the parties that they have not had contact with the Commission about the application within 150 days before filing the application.

E. Since an agreement has been reached and no hearing has been requested, none is necessary for the Commission to make a determination.[2]

Decision

It is the Commission's decision that the 2022 Territorial Agreement is in the public interest as a whole and is not detrimental to the public interest. The Commission will waive application of the 60-day notice requirements of Commission Rule 20 CSR 4240-4.017(A) pursuant to 20 CSR 4240-4.017(D). The Commission will approve the 2022 Territorial Agreement. In addition, the Commission finds it reasonable to make this order effective in less than thirty days to accommodate the 120-day decision requirement of Section 394.312.4, RSMo.

THE COMMISSION ORDERS THAT:

1. The 2022 Territorial Agreement, filed on June 3, 2022, is approved.

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

2. Poplar Bluff and Ozark Border are granted a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017.

3. Poplar Bluff and Ozark Border are authorized to perform the 2022 Territorial Agreement, and all acts and things necessary to performance.

4. This order shall be effective on July 28, 2022.

5. This file shall be closed on July 29, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and Around the City of Eureka, Missouri	)))))))	**File No. WA-2021-0376**

AMENDED REPORT AND ORDER

CERTIFICATES

§21. Grant or refusal of certificate generally

In determining whether to grant a utility a certificate of convenience and necessity (CCN), the Commission has articulated five criteria to guide its determination of whether granting the CCN is "necessary or convenient for the public service" under Section 393.170, RSMo 2016: (1) there must be a need for the service, (2) the applicant must be qualified to provide the proposed service, (3) the applicant must have the financial ability to provide the service, (4) the applicant's proposal must be economically feasible, and (5) the service must promote the public interest. *In Re Intercon Gas, Inc.,* 3 Mo P.S.C. 554, 561 (1991).

§21. Grant or refusal of certificate generally

Where water and sewer company sought Commission approval of purchase of municipal water and sewer systems and granting of certificates of convenience and necessity (CCNs), the Commission had concerns with the manner in which the appraised value of the systems was determined, the lack of explanation for the reasoning behind the fair market value determinations of the systems, and the independence of the appraisers, but, ultimately, approved the purchase of the systems and granted the CCNs.

SEWER

§2. Certificate of convenience and necessity

The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a water system upon purchase of the municipal system from the City of Eureka, Missouri.

§4. Transfer, lease and sale

The Commission granted permission for Missouri-American Water Company to acquire the municipal sewer system of the City of Eureka, Missouri.

VALUATION

§14. For rate making purposes
§78. Water
§79. Sewer

Section 393.320, RSMo 2016, establishes a process for determining the appraised value of a "small water utility" when purchased by a "large water public utility," with the appraised value setting the ratemaking rate base of the acquired small water utility. If the procedures under Section 393.320, RSMo, have been chosen by a large water public utility, those procedures "shall be used by the [Commission] to establish the ratemaking rate base of a small water utility during an acquisition." The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility.

§14. For rate making purposes
§78. Water
§79. Sewer

Although the Commission had concerns about the process used to arrive at the appraised values of municipal water and sewer systems sought to be acquired, assuming the procedures of Section 393.320, RSMo 2016, were followed, the Commission had to use the lesser of the resulting appraised value or the purchase price of the small water utility, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, as the ratemaking rate base added for the acquisition of the small water utility.

WATER

§2. Certificate of convenience and necessity

The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a sewer system upon purchase of the municipal system from the City of Eureka, Missouri.

§4. Transfer, lease and sale

The Commission granted permission for Missouri-American Water Company to acquire the municipal water system of the City of Eureka, Missouri.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and Around the City of Eureka, Missouri	)))))))	**File No. WA-2021-0376**

AMENDED REPORT AND ORDER

Issue Date: June 29, 2022

Effective Date: July 9, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and Around the City of Eureka, Missouri	))))))))	**File No. WA-2021-0376**

PARTIES & APPEARANCES

MISSOURI-AMERICAN WATER COMPANY:

Dean Cooper, Attorney at Law**,** Brydon, Swearengen & England, 312 East Capitol, P.O. Box 2230, Jefferson City, Missouri 65102.

OFFICE OF THE PUBLIC COUNSEL:

Nathan Williams, Chief Deputy Public Counsel, **Lindsay Van Gerpen**, Staff Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, P.O. Box 2230, Jefferson City, Missouri 65102.

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

Karen Bretz, Deputy Counsel, Public Service Commission, 200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Kenneth J. Seyer

AMENDED REPORT AND ORDER

I. Procedural History

On April 21, 2021, Missouri-American Water Company (MAWC) filed an *Application and Motion for Waiver* for authorization to acquire the water and sewer system assets currently owned and operated by the City of Eureka (Eureka).[1] MAWC also requested a Certificate of Convenience and Necessity (CCN) for the service areas of the water and sewer systems. MAWC filed two identical applications – one for the water system (File No. WA-2021-0376) and one for the sewer system (File No. SA-2021-0377). On the date those applications were filed, MAWC also filed a Motion to Consolidate in both files. The files were consolidated on May 10, 2021, and proceeded under WA-2021-0376 as the lead file.

Jefferson County Public Sewer District (JCPSD) was granted intervention. JCPSD alleged that it is "authorized to provide, has made investments in, and does provide both water and sewer services in Jefferson County in and around Eureka, including portions of the area [MAWC] proposes to serve in its [application]."[2] MAWC submitted a revised legal description and service area map that excludes the Jefferson County portion of Eureka.[3] MAWC, JCPSD, and the Staff of the Commission (Staff) filed a *Partial Stipulation and Agreement* on January 14, 2022, in which the parties agreed that, if the Commission grants the CCNs requested by MAWC, the boundaries of any CCNs issued should be as described in the revised legal description and service area map and those boundaries

[1] Throughout this Report and Order, the terms "sewer" and "wastewater" are used interchangeably.
[2] *Application to Intervene*, Jefferson County Public Sewer District.
[3] Exh. 101, *Gateley Rebuttal Testimony,* Sch. CBG-r2*,* p. 10; Exh. 5, *Eisenloeffel Direct Testimony,* Sch. BWE-3, BWE-4.

should be depicted in MAWC's tariff.[4] The Office of Public Counsel (OPC) did not file an objection to the *Partial Stipulation and Agreement*. The Commission has reviewed the unopposed *Partial Stipulation and Agreement*, finds it reasonable, and will approve it.

Staff recommended that the Commission reject MAWC's application for authorization to acquire Eureka's water and sewer system assets and to not grant the CCNs.[5] MAWC filed a response to the recommendation, and the parties agreed to a procedural schedule. A hearing was set and written direct, rebuttal, and surrebuttal testimony was filed.

As part of the procedural schedule, the parties were directed to file a list of issues to be decided by the Commission. The subsequent joint list of issues filed identified three issues to be decided by the Commission:

1. Is MAWC's provision of water and wastewater service associated with its proposed purchase of the City of Eureka water and wastewater systems "necessary or convenient for the public service" within the meaning of the phrase in Section 393.170, RSMo?[6]

2. If the Commission grants MAWC's application for the CCNs:

   A. What conditions, if any, should the Commission impose, and

   B. Of which existing service areas should the Eureka water and wastewater systems become a part?

3. Does Section 393.320, RSMo, require the Commission to establish the ratemaking rate base in this case for the Eureka water and wastewater systems? If so, what is the ratemaking rate base that should be established?

Subsequently, the parties filed statements of their positions on the three issues. In their statements of positions, Staff and MAWC appeared to agree on the second issue.

[4] OPC was not a party to the *Partial Stipulation and Agreement* and neither supports nor opposes it.
[5] *Staff Recommendation.*
[6] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

This was verified by the presiding judge at the start of the evidentiary hearing on January 20, 2022. The Office of Public Counsel (OPC) took no position on the issue. JCPSD did not file a statement of positions.

The Commission held an evidentiary hearing on January 20-21, 2022. Initial post-hearing briefs were filed on February 18, 2022, and reply briefs were filed on February 28, 2022.

At the request of Staff,[7] the Commission reopened the record[8] and held a third evidentiary hearing session on May 6, 2022. That session was limited to arguments and evidence regarding The Arbors of Rockwood Community Improvement District (Arbors CID) and how the Arbors CID property assessment being paid by residents affects the public interest determination the Commission must make.

In its *Application and Motion for Waiver*, MAWC requested the Commission waive the requirement to give 60-days' notice prior to filing the application, as required in Commission Rule 20 CSR 4240-4.017(1). MAWC filed with the application a verified declaration that no MAWC representative had had any communication with the Office of the Commission, as defined by 20 CSR 4240-4.015(10), within the immediately preceding 150 days regarding the subject matter of the application. The Commission finds that good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

On June 9, 2022, the Commission issued a *Report and Order* in this case to be effective on July 9, 2022. On June 14, 2022, MAWC filed a motion requesting a correction to the Commission's *Report and Order* due to discrepancies between the body of the

[7] *Staff's Request to Reopen the Record*.
[8] *Order Granting Request to Reopen the Record*.

Report and Order and the Ordered Paragraph 4. No responses to MAWC's motion were filed. The Commission has reviewed MAWC's motion and finds it should be granted. Therefore, the Commission issues this *Amended Report and Order* making changes to Ordered Paragraph 4.

Because the original *Report and Order* was set to become effective on July 9, 2022, the Commission finds it is reasonable to make this *Amended Report and Order* effective on that date, which is less than 30 days after issuance.

II. Findings of Fact

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

1. MAWC is a Missouri corporation with its principal place of business in St. Louis, Missouri.[9]

2. MAWC currently provides water service to approximately 470,000 customers and sewer service to approximately 15,000 customers in the State of Missouri.[10] MAWC provides water and/or sewer service to all of St. Louis County, except for Eureka and one other community.[11]

3. Eureka is a fourth class city located in St. Louis County which has owned its own water and wastewater systems since 1958.[12] As of November 5, 2021, Eureka

[9] Exh. 5, *Eisenloeffel Direct Testimony*, p. 5.
[10] Exh. 5, *Eisenloeffel Direct Testimony*, p. 5.
[11] Exh. 5, *Eisenloeffel Direct Testimony*, p. 5.
[12] Exh. 1, Flower Direct Testimony, p. 3.

served approximately 4,100 water customers and approximately 4,100 wastewater accounts.[13]

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

5. Staff is a party to this case pursuant to Section 386.071, RSMo, and Commission Rule 20 CSR 4240-2.010(10).

6. MAWC included in its original proposed water and sewer service areas a portion of Eureka that extends across the Meramec River into Jefferson County and for which JCPSD asserted it has exclusive rights to provide water and sewer services.[14] MAWC submitted a revised legal description and service area map that excludes the Jefferson County portion of Eureka.[15]

7. Eureka first began internal conversations and analysis on the possibility of selling its utilities in 2018.[16] After considering a range of options, Eureka reached out to MAWC in 2019 to explore a potential sale.[17] The two parties entered into an agreement to have Eureka's water and sewer systems appraised.[18]

8. MAWC chose the appraisal procedure provided by Section 393.320, RSMo, to determine the ratemaking rate base for Eureka's water and sewer systems. Under the statute, the appraisal is jointly prepared by three appraisers – one appointed by the small

[13] Exh. 1, Flower Direct Testimony, p. 3.
[14] *Bjornstad Rebuttal Testimony*, pp. 4-5.
[15] Exh. 101*, Gateley Rebuttal Testimony,* Sch. CBG-r2, p. 12; Exh. 5, *Eisenloeffel Direct Testimony,* Sch. BWE-3, BWE-4.
[16] Exh. 1, *Flower Direct Testimony*, p. 5.
[17] Exh. 1, *Flower Direct Testimony*, p. 5.
[18] Exh. 1, *Flower Direct Testimony*, p. 5; Sch. SMF-1.

water utility (Eureka), one by the large water public utility (MAWC), and a third appraiser selected by the two appointed appraisers.[19]

9. In an August 7, 2019, attachment to an e-mail from MAWC Business Services Specialist Melisha Billups to Eureka City Administrator Craig Sabo and Mayor Sean Flower, Billups provided the Eureka officials with a list of appraisers on their "vendor list for appraisal service."[20] The list highlighted appraisers that MAWC had "previously utilized for water and/or wastewater system appraisals" and, in another attachment, provided "qualification reports" for those appraisers.[21] The e-mail also stated that MAWC "will handle the appraisal cost so [Billups] will take care of getting the contracts secured for the appraisal services."[22]

10. In an August 9, 2019, e-mail, Sabo informed Billups that Eureka had selected Dinan Real Estate Appraisers to be appointed as their appraiser. On that same date, Billups e-mailed Ed Dinan and Joe Batis (the appraiser appointed by MAWC) to make the two appraisers aware of each other's appointments and to instruct them to "select a third appraiser to complete the appraisal team to produce one appraisal report."[23] Billups added:

> I am sending you a list of the appraisers that we have pre-qualified and I have also highlighted the appraisers that we have previously utilized for water and/or wastewater system appraisals. If you would like to select an appraiser that is not on the list, please provide me with their contact information so I can get them qualified to provide appraisal services.[24]

Elizabeth Goodman Schneider was subsequently selected as the third appraiser.

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[19] Section 393.320.3(1), RSMo.
20 Exh. 108, MoPSC 0061 Attachment 1, p. 22.
[21] Exh. 108, MoPSC 0061 Attachment 1, p. 22.
[22] Exh. 108, MoPSC 0061 Attachment 1, p. 22.
[23] Exh. 108, MoPSC 0061 Attachment 1, p. 20.
[24] Exh. 108, MoPSC 0061 Attachment 1, p. 20.

11. Joe Batis testified during the hearing that, over the last 10-15 years, he had participated in 50-75 appraisals of water and/or sewer systems.[25] Of that number, he estimated that one-fourth to one-third were for American Water Company (MAWC's parent company), of which about half were for MAWC, concluding that he had conducted 10-15 appraisals of water and/or sewer systems for MAWC in the last 7-8 years.[26]

12. In an e-mail to the other two appraisers and to Melisha Billups dated January 12, 2020, with the subject line, "REVISED DRAFT – EUREKA," Joe Batis wrote, "While reviewing the report this morning, I made several changes/corrections. Use this copy for your review. Please send your changes/comments." Batis attached a document with the filename, "NEW DRAFT - EUREKA APPR - JAN 12.pdf."[27]

13. The appraisers hired Kelly Simpson of Flinn Engineering to "provide a high-level review of the condition of the [Eureka] system, estimate the 2019 installation cost, and estimate the depreciated book value of the assets."[28]

14. Simpson's assessment of the condition of the above-ground assets was based on Eureka's insurance replacement cost list of assets and information provided by Eureka as to the year of installation.[29] The cost of installation of the below-ground assets was calculated using a combination of Simpson's opinion of cost to install the assets based on knowledge of other systems of similar size, as well as correspondence from

[25] Tr. 99-100.
[26] Tr. 100-101.
[27] Exh. 108, MoPSC 0061 Attachment 1, p. 25.
[28] Exh. 11, *LaGrand Direct Testimony*, Sch. BWL-3, p. 25.
[29] Exh. 9, *Simpson Direct Testimony,* Sch. KES-1, p. 1.

Eureka, vendors, and contractors.[30] The year of installation for the below-ground assets was estimated based on the installation dates of the above-ground assets.[31]

15. Using that information, Simpson submitted a report dated January 18, 2020, (the Initial Flinn Engineering Report) to the appraisers in which she listed the estimated depreciated book value of the Eureka water system at $10.6 million and the sewer system at $5.5 million, for a total of $16.1 million.[32]

16. The Initial Flinn Engineering Report concluded that the systems were in "good condition and well-maintained"[33] despite Simpson making no on-site inspections of the systems (although she did visit the sites on December 9, 2021, six weeks before the evidentiary hearing).[34] Instead, Simpson relied upon photos that, largely, only showed exteriors of buildings and did not include any photos of building interiors or equipment inside.[35]

17. Simpson also did not review maintenance records for the Eureka water and sewer systems, review inflow and infiltration studies for the sewer system, or do any investigation as to whether the Eureka water and sewer systems were in compliance with Missouri Department of Natural Resources (DNR) regulations.[36] As a result, even though

[30] Exh. 9, *Simpson Direct Testimony,* Sch. KES-1, p. 1.
[31] Exh. 1, *LaGrand Direct Testimony,* Sch. BWL-3, pp. 1, 3. "We assumed 70% of the water distribution system dates back to 1959 and 5% was added the same year the wells were installed. We assumed that the number of fire hydrants and services/meters installed each year could be prorated based on the quantity of water main installed."
[32] Exh.11, *LaGrand Direct Testimony,* Sch. BWL-3.
[33] Exh. 9, *Simpson Direct Testimony,* Sch. KES-1, p. 7.
[34] Exh. 9, *Simpson Direct Testimony,* Sch. KES-1, p. 1; Tr. 221 (Simpson).
[35] Exh. 301; Tr. 205-206 (Simpson).
[36] Tr. 211, 225-226 (Simpson).

compliance violations existed,[37] no DNR compliance issues were mentioned in Simpson's report.[38]

18. Once the Initial Flinn Engineering Report was received, the three appraisers consulted with each other and created an appraisal report dated January 20, 2020.[39] This report (the Initial Appraisal Report) valuing the water system at $12.5 million ($3,400 per customer) and the sewer system at $5.5 million ($1,400 per customer), for a total of $18 million, was sent to Eureka on January 20, 2020.[40]

19. On February 6, 2020, MAWC Engineering Manager Derek Linam contacted Kelly Simpson via e-mail requesting to meet with her regarding the Initial Flinn Engineering Report.[41]

20. In a February 7, 2020, e-mail, Linam wrote to Simpson, "I wanted to review the assumption that the system was 70% built by the 1950's. I pulled some statistics from parcels out of GIS and wondered how it might change the depreciated value if we use some different assumptions."[42]

21. On February 10, 2020, Linam sent Simpson an e-mail in which he wrote, "Here is a 'crude' spreadsheet I put together of parcel data, year built, that we can discuss. Thought I would send it to you to look at before our discussion. Again, just wondering how a 'newer' system assumption will impact depreciated value for the water and waste water distribution and collection systems."[43] Six minutes later, Simpson replied, "I'll take a look

[37] Exh. 101, *Gateley Rebuttal Testimony,* Sch. CBG-r2, pp. 18-19.
[38] Exh. 9, *Simpson Direct Testimony,* Sch. KES-1.
[39] Exh. 300, *Valuation Report* dated January 20, 2020, pp. 2, 76; Exh. 3, *Batis Direct Testimony*, p. 5.
[40] Exh. 300.
[41] Exh 107, *MAWC Response to Data Request 60*, p. 24.
[42] Exh 107, *MAWC Response to Data Request 60*, p. 23.
[43] Exh 107, *MAWC Response to Data Request 60*, p. 17.

before we meet. I attached my spreadsheet if you want to try some different percentages. They are on the 'Water Main' tab and the 'Sewer Tab'. They both feed directly to the 'Depreciation' tab so don't change any numbers on that one."[44]

22. On February 20, 2020, Linam sent Simpson an e-mail with the subject line, "Eureka Parcel Analysis."[45] Attached to the e-mail was Simpson's spreadsheet modified to add a table grouping the number of parcels built in Eureka each year into seven time periods, rather than the three time periods that Simpson had in the spreadsheet she had provided to Linam on February 10, 2020.[46]

23. Kelly Simpson testified that she originally assumed that 70% of the below-ground assets were built and installed when the systems were placed into service (water 1959; sewer 1950) and then an additional 5% of the below-ground assets were built and installed with the addition of each well (for the water system) and each lift station (for the sewer system).[47] The result, she testified, was a "very old and very depreciated below-ground asset number."[48] When Derek Linam made Simpson aware of GIS data in February of 2020, Simpson concluded that the use of the GIS data was "a significantly more accurate and appropriate method of estimating the age" of the below-ground assets.[49]

24. Using that GIS data, Simpson revised her estimates of the age of the below-ground assets and issued the second "final" report,[50] dated March 16, 2020,

[44] Exh 107, *MAWC Response to Data Request 60*, pp. 17-19
[45] Exh 107, *MAWC Response to Data Request 60*, p. 15.
[46] Exh 107, *MAWC Response to Data Request 60*, p. 16.
[47] Exh. 9, *Simpson Direct Testimony*, p. 7; Tr. 218-219 (Simpson).
[48] Tr. 219 (Simpson).
[49] Exh. 9, *Simpson Direct Testimony*, p. 7.
[50] Exh. 9, *Simpson Direct Testimony,* p. 6.

(Revised Flinn Engineering Report) to the appraisers in which she described how she used the GIS data.[51] The Revised Flinn Engineering Report made no reference to the January 18, 2020, Initial Flinn Engineering Report.[52]

25. Joe Batis sent an e-mail to Melisha Billups on March 16, 2020. In the e-mail, Batis informed Billups that there were "significant impacts to the valuation opinions included in our appraisal report dated January 20, 2020" and that it "would be a good idea to arrange a conference call with you to discuss the following [six] items resulting from the new/updated information provided to Kelly Simpson (Flinn Engineering)."[53] Batis then listed the six items. Batis went on to state that he would be e-mailing Eureka City Administrator Craig Sabo "providing him no specifics about the assignment, changes, etc. -- I will merely tell him that we are in the process of collecting and reviewing additional information and will be determining the impact within the next week or two."[54] Four minutes later, Batis e-mailed Sabo and Billups, writing the following:

> I am in the process of reviewing additional/updated information regarding the assets of the Eureka water and wastewater systems. Until I have reviewed everything in detail, consult with Kelly Simpson (Flinn Engineering), and consult with the other two appraisers, I cannot provide you with any meaningful information about the impact to value. I expect to have a better understanding of the revisions within the next few days, assuming everyone is available for conference calls, etc.[55]

[51] Exh. 9, *Simpson Direct Testimony,* Sch. KES, p. 3. "[Eureka] began operating the water system in 1959. We assumed the distribution system was expanded with the addition of each well. The quantity of distribution assets was prorated based on the approximate amount of new buildings in the period between well installations. The St. Louis County GIS parcel data includes the year each building was built. The data was queried for buildings within the municipality of Eureka."
Exh. 9, *Simpson Direct Testimony,* Sch. KES, p. 5. "The oldest sewer lift station was installed in 1950. We assumed the sewer system was expanded with the addition of lift stations. The percentage assets per period were assumed to be similar to the calculation described above for the water distribution assets."
[52] Exh. 9, *Simpson Direct Testimony,* Sch. KES; Tr. 220 (Simpson).
[53] Exh. 108, MoPSC 0061, Attachment 1, p. 113.
[54] Exh. 108, MoPSC 0061, Attachment 1, p. 113.
[55] Exh. 108, MoPSC 0061, Attachment 1, p. 89.

26. A revised appraisal report by the same appraisers, valuing the water system at $18 million and the sewer system at $10 million, was sent to Eureka on March 23, 2020 (Final Appraisal Report).[56] The Final Appraisal Report used the cost approach and the sales comparison approach to arrive at the fair market value of the two systems.[57]

27. The sales comparison approach analysis of the Eureka systems contained in the March 23, 2020, Final Appraisal Report determined a fair market value per customer of $4,500 for the water system[58] and $2,500 for the sewer system.[59] At the time of the appraisal, Eureka had 4,009 water customers[60] and 3,957 sewer customers.[61]

28. For the seven comparable water system sales listed in the Final Appraisal Report analysis, the per-customer high sale price was $4,157, the low was $2,700, the median was $3,528, and the mean was $3,416.[62] For the seven comparable sewer system sales listed in the analysis, the per-customer high sale price was $5,814, the low was $1,367, the median was $3,483, and the mean was $2,782.[63]

29. The Final Appraisal Report contained no explanation of the reasoning behind the per-customer fair market values that were determined.[64] In addition, no evidence was introduced during the hearing explaining the factors that led to the fair market values that were the conclusion of the analysis.[65] When Joseph Batis, the

[56] Exh. 3, *Batis Direct Testimony*, p. 6; Sch. JEB-2.
[57] Exh. 3, *Batis Direct Testimony*, Sch. JEB-2, pp. 14-15.
[58] Exh. 3, *Batis Direct Testimony,* Sch. JEB-2, p. 75.
[59] Exh. 3, *Batis Direct Testimony,* Sch. JEB-2, p. 77.
[60] Exh. 3, *Batis Direct Testimony,* Sch. JEB-2, p. 75.
[61] Exh. 3, *Batis Direct Testimony,* Sch. JEB-2, p. 77.
[62] Exh. 3, *Batis Direct Testimony,* Sch. JEB-2, p. 75.
[63] Exh. 3, *Batis Direct Testimony,* Sch. JEB-2, p. 77.
[64] Exh. 3, *Batis Direct Testimony,* Sch. JEB-2.
[65] Exh. 3, *Batis Direct Testimony*; Exh. 4, *Batis Surrebuttal Testimony*; Tr. 132-137, 154-156 (Batis).

appraiser appointed by MAWC, was asked on the stand during the hearing to list the features of the Eureka water and sewer systems that led the appraisers to arrive at the $4,500 and $2,500 per customer fair market values, respectively, versus the sales prices of the comparable systems, or to otherwise explain how they arrived at those figures, he could not explain the reasoning.[66] Instead, he could only offer that it was based on the appraisers' "experience and judgment."[67]

30. Eureka placed on an August 4, 2020, ballot the question of whether to grant the city authority to sell its water and sewer utilities to MAWC for a total of $28 million.[68] The proposition passed with 67% overall approval[69] and 67% approval in the MER-22 precinct, which includes the Arbors CID.[70]

31. On November 17, 2020, MAWC and Eureka entered into an agreement to purchase Eureka's water and sewer systems for $28 million.[71]

32. If the acquisition of Eureka's water and sewer systems is approved, MAWC intends to add Eureka's approximately 4,100 water customers to the "St. Louis County" customer rate base of approximately 343,000 customers and to add Eureka's approximately 4,100 sewer customers to the "Other Sewer" customer rate base of approximately 8,500 customers.[72]

33. The St. Louis County water customer rate base would be increased to $1.2 billion with the addition of the $18 million Eureka water rate base – an increase of

[66] Tr. 132-135, 154-156 (Batis).
[67] Tr. 136 (Batis).
[68] *Application and Motion for Waiver* (MAWC), Appendix B, p. 1.
[69] Exh. 1, *Flower Direct Testimony*, p. 7.
[70] Exh. 16, *Eureka Voting Results* (August 4, 2020).
[71] *Application and Motion for Waiver* (MAWC), Appendix D.
[72] Exh. 11, *LaGrand Direct Testimony*, pp. 8-9.

1.5%. The Other Sewer customer rate base would be increased to $43.9 million with the addition of the $10 million Eureka sewer rate base – an increase of 29.5%.[73]

34. Staff investigated Eureka's water and sewer systems, including a review of compliance with drinking water and environmental regulations and on-site visits May 12 and June 10, 2021.[74]

35. Eureka's water system includes six active wells, six 500,000 gallon storage tanks, and one 250,000 gallon storage tank.[75] The system produces an average of 1.4 million gallons of water per day.[76]

36. All of the active wells have raw water quality issues that require softening treatment before distribution to the customers.[77] Over the years, customers have complained about taste, odor, and corrosion of water appliances related to water quality.[78] MAWC indicated to Staff that a significant driver of Eureka's interest in selling their utilities was to obtain a different source of drinking water from MAWC.[79] However, the water distributed by Eureka meets all primary (health related) drinking water standards.[80]

37. Water in the Eureka system is distributed from the storage tanks by gravity or booster stations that pressurize the water lines.[81]

38. Eureka's steel water storage tanks were inspected in 2018 and were found to be in "overall good condition, but delamination and flaking of the coating on the roof

[73] Exh. 11, *LaGrand Direct Testimony*, p. 9.
[74] Exh. 101, *Gateley Rebuttal Testimony,* Sch. CBG-r2, pp. 11, 18.
[75] Exh. 101, *Gateley Rebuttal Testimony,* Sch. CBG-r2, p. 15.
[76] Exh. 101, *Gateley Rebuttal Testimony,* Sch. CBG-r2, p. 15.
[77] Exh. 101, *Gateley Rebuttal Testimony,* Sch. CBG-r2, p. 13-14.
[78] Exh. 101, *Gateley Rebuttal Testimony,* Sch. CBG-r2, p. 14.
[79] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 14; Exh, 7, *Kaiser Direct Testimony*, p. 5.
[80] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 14.
[81] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 16.

and blistering on the floor of one tank was noted, as was sidewall blistering within another tank.[82]

39. If MAWC receives approval to purchase Eureka's water system, the company intends to refurbish tanks where required.[83] In addition, MAWC intends to routinely invest capital to replace water main, service line, valves, and hydrants.[84]

40. MAWC plans major improvements in the first three years of ownership, including water system meter replacements/conversion to the St. Louis County district's meters (estimated at $1.1 million) and construction of a five-mile water system transmission main to connect to the current MAWC St. Louis County water distribution system (estimated at $9-10.5 million).[85] MAWC would then use Eureka's water wells as only a backup source of water once Eureka's system is connected to the St. Louis County system.[86]

41. Staff's overall impression of the water system during their site visit was that the facilities "appeared to be in fair to good condition, with the equipment well maintained and exhibiting ordinary wear and tear from normal operations." Staff also found the general housekeeping, grounds maintenance, and site security to be "very good."[87]

[82] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 17-18.
[83] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.
[84] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.
[85] Exh. 7, *Kaiser Direct Testimony*, p. 5; Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 18, 21-22.
[86] Exh. 7, *Kaiser Direct Testimony*, p. 6.
[87] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.

42. Eureka utilizes a three-cell lagoon system with fine bubble aeration and ultraviolet light disinfection.[88] Aquamat® technology is used to further facilitate treatment beyond aeration.[89]

43. In 2016, DNR notified Eureka that it must comply with new ammonia limits by 2021.[90] In 2018, Eureka informed DNR that it planned to construct a new treatment facility to comply and requested, and was granted, an extension to October 1, 2022, to comply with the ammonia limits.[91] As of the date of the Staff inspection, plans for a new plant had not been finalized by Eureka.[92] The current operating permit issued by DNR indicates that an oxidation ditch plant may be required, at an estimated cost of $14 million.[93]

44. As of June, 10, 2021, Eureka was also under DNR enforcement for exceeding effluent limits and Sanitary Sewer Overflows (SSOs) during 2019 and 2020.[94] During the on-site visit, Staff and MAWC personnel noted large areas of surface boils in Eureka's sewage lagoons, (indicative of broken air piping) that is a likely cause of treatment challenges that lead to effluent parameter violations.[95] City personnel informed Staff that several of the ten lift stations in the system have experienced flooding during

[88] Exh. 101*, Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.
[89] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18. Note: Aquamats (Advanced Microbial Treatment System for lagoon systems) are biomass support systems consisting of plastic ribbons suspended in the waste stream to provide surface area for bacterial growth and waste decomposition.
[90] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18.
[91] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 18-19.
[92] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.
[93] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.
[94] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.
[95] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.

heavy rains.[96] Inflow and infiltration of the sewer lines is also a concern of Eureka personnel.[97]

45. Staff believes that MAWC has the experience and expertise to operate the sewer system as designed and make needed repairs and improvements.[98]

46. MAWC identified replacement of a lift station, at an approximate cost of $350,000, as its highest priority should its acquisition of the sewer system be approved.[99] MAWC projects spending $2.65 million over the next eight years to upgrade or repair several lift stations to prevent future SSOs and to make significant repairs to the collection system to reduce inflow and infiltration.[100]

47. Staff reviewed available information from Eureka and MAWC to estimate the net book value of the assets of the water and sewer systems. Based on their analysis, as of August 31, 2021, the net book value of the assets was approximately $10.7 for the water system and $7.1 million for the sewer system, or $17.8 million combined.[101] Staff's net book value of $10.7 million did not include $2.9 million of contributed plant for the water system assets in the Arbors subdivision.[102]

48. Staff acknowledged that, as non-regulated utilities, Eureka has been under no obligation to maintain its books for its water and sewer systems in accordance with the National Association of Regulatory Commissioners (NARUC) Uniform System of Accounts and has not done so.[103]

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[96] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.
[97] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19.
[98] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 19-20.
[99] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 20.
[100] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 20.
[101] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 20-21.
[102] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 21.
[103] Tr. 273 (McMellen).

49. In Staff's opinion, there is both a current and future need for water and sewer service in the Eureka water and sewer service areas and that MAWC is qualified to own and operate the Eureka water and sewer systems.[104]

50. In its *Application and Motion for Waiver*, MAWC stated that no external financing was anticipated to acquire the Eureka water and sewer systems.[105] In Staff's opinion, MAWC possesses the necessary financial ability for its proposed acquisition and that the proposal is feasible, as the purchase of Eureka's assets will generate positive income.[106]

51. Staff recommended that the Commission reject MAWC's application for the CCNs and authorization to acquire the Eureka water and sewer systems. However, should the Commission approve the application, Staff recommended the following conditions:[107]

a. Grant MAWC CCNs to provide water and sewer service in the proposed Eureka service areas, as modified and outlined herein;

b. Approve existing Eureka water and sewer rates applicable to customers in MAWC's Eureka sewer approved service areas;

c. Require MAWC to submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its Electronic Filing Information System (EFIS) tariff P.S.C. MO No. 13 and 26, applicable to water service and sewer service in the requested service area;

d. Require MAWC to notify the Commission of closing on the assets within five (5) days after such closing;

e. If closing on the water and sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, require MAWC to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional

[104] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 26-27.
[105] *Application and Motion for Waiver*, p. 5.
[106] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 27.
[107] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 29-31.

status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur;

f. If MAWC determines that a transfer of the assets will not occur, require MAWC to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require MAWC to submit tariff sheets as appropriate that would cancel service area map, legal descriptions, and rate sheets applicable to the Eureka area in its sewer tariff;

g. Require MAWC to develop a plan to book all of the Eureka plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within sixty (60) days after closing on the assets;

h. Require MAWC to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

i. Adopt for Eureka water and sewer assets the depreciation rates ordered for MAWC in File No. WR-2020-0344;

j. Require MAWC to provide to the Customer Experience Department (CXD) an example of its actual communication with the Eureka service area customers regarding its acquisition and operations of the Eureka water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;

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

l. Except as required by Section 393.320, RSMo, make no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCNs to MAWC, including expenditures related to the certificated service areas, in any later proceeding;

m. Require MAWC to distribute to the Eureka customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of

Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;

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

o. Require MAWC to provide training to its call center personnel regarding rates and rules applicable to the Eureka customers;

p. Require MAWC to include the Eureka customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and

q. Require MAWC to file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within ten (10) days after such communications and notifications.

52. MAWC does not oppose Staff's recommended conditions.[108]

53. Current monthly rates for Eureka residential water customers consist of a $15.00 customer charge and a $2.50 per 1,000 gallons commodity charge.[109] If MAWC's acquisition of Eureka's water system is approved, MAWC proposes to change those rates to match MAWC's current St. Louis area water rates, $9.00 and $5.6290, respectively.[110]

54. Current monthly rates for Eureka residential sewer customers consist of a $15.00 customer charge and a $2.50 per 1,000 gallons commodity charge.[111] If MAWC's acquisition of Eureka's sewer system is approved, MAWC proposes to change the customer charge to match MAWC's current Other Sewer area sewer rate of $61.64 and to drop the commodity charge.[112]

[108] *MAWC Statement of Positions*, p. 3.
[109] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 17.
[110] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 17-18.
[111] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, p. 17.
[112] Exh. 101, *Gateley Rebuttal Testimony*, Sch. CBG-r2, pp. 17-18.

55. In 2016, Eureka passed an ordinance approving a petition requesting the creation of the Arbors CID for a new subdivision within the city.[113] The primary purpose of the Arbors CID is to provide a source of revenue to the subdivision developer to construct and install "lawns, trees, and other landscape, sidewalks, streets, traffic signs and signals, utilities, drainage, water, storm and sewer systems, and other site improvements . . . ."[114]

56. Residents within the Arbors CID pay annual assessments of $500 to $800 through approximately the year 2048.[115] The assessments do not include sewer system costs.[116] There are 528 total lots in the Arbors subdivision and, as of May 2, 2022, 405 occupancy permits had been issued.[117] Therefore, as of that date, there were 405 Arbors CID customers included in the Eureka water system.[118]

57. If the sale from Eureka to MAWC is approved, the annual revenue requirement associated with the addition of $2.9 million to the St. Louis County water system customer rate base is likely to be less than $1 per year for customers in the Arbors CID.[119]

III. Conclusions of Law

A. MAWC is a "water corporation," a "sewer corporation," and a "public utility," as those terms are defined by Section 386.020, RSMo. As such, MAWC is subject to the

[113] Exh. 110, Document 1, pp. 1-3.
[114] Exh. 110, Document 1, p. 7.
[115] Exh. 110, Document 1, pp. 12-13.
[116] Exh. 14, *Flower Rebuttal Testimony*, p. 6.
[117] Exh. 14, *Flower Rebuttal Testimony*, p. 5.
[118] Exh. 14, *Flower Rebuttal Testimony*, p. 5.
[119] Tr. 341 (McMellen), Tr. 365 (MAWC Closing).

jurisdiction, supervision, control, and regulation of the Commission, as provided in Chapters 386 and 393, RSMo.

B. Section 393.320, RSMo, establishes a process for determining the appraised value of a "small water utility" when purchased by a "large water public utility," with the appraised value setting the ratemaking rate base of the acquired small water utility. Under Section 393.320, RSMo, MAWC meets the definition of a "large water public utility" and Eureka meets the definition of a "small water utility."

C. Per Section 393.320.2, RSMo, if the procedures under Section 393.320, RSMo, have been chosen by a large water public utility, those procedures "shall be used by the [Commission] to establish the ratemaking rate base of a small water utility during an acquisition."

D. Section 393.320.3(1), RSMo, states:

> An appraisal shall be performed by three appraisers. One appraiser shall be appointed by the small water utility, one appraiser shall be appointed by the large water public utility, and the third appraiser shall be appointed by the two appraisers so appointed. Each of the appraisers shall be a disinterested person who is a certified general appraiser under chapter 339.

E. Section 393.320.3(2)(a), RSMo, states, in part:

> The appraisers shall . . . [j]ointly prepare an appraisal of the fair market value of the water system and/or sewer system. The determination of fair market value shall be in accordance with Missouri law and with the Uniform Standards of Professional Appraisal Practice" (USPAP).

F. Section 393.320.5(1), RSMo, states, in part:

> The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility . . . .

G. In the USPAP definitions, “appraiser” is defined as “one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective.”[120]

H. USPAP Rule 2-2 (a)(x)(5) states the following regarding the content of a real estate appraisal report:

> The content of an Appraisal Report must be appropriate for the intended use of the appraisal and, at a minimum provide sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1 by summarizing the information analyzed and the reasoning that supports the analyses, opinions, and conclusions, including reconciliation of the data and approaches.[121]

I. USPAP Rule 1-4(f) states:

> When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.[122]

J. Section 393.170.2, RSMo, requires MAWC to have CCNs, which are granted by the Commission, prior to providing water or sewer service in the current Eureka service area.

K. Section 393.170.3, RSMo (Supp. 2021), in setting forth the standard for the granting of CCNs, requires that the Commission determine that the services are “necessary or convenient for the public service.” The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned

[120] Exh. 302, pp. 3, 108-110 (Advisory Opinion 21).
[121] Exh. 302, p. 21.
[122] Exh. 302, p. 19.

by lack of the proposed service is great enough to amount to a necessity.[123] It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.[124]

L. The Commission has previously articulated the specific criteria to be used when evaluating CCN applications: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.[125]

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

N. As the applicant, MAWC bears the burden of proof.[126] The burden of proof is the preponderance of the evidence standard.[127] In order to meet this standard, MAWC must convince the Commission it is “more likely than not” that its provision of water and sewer service in the current Eureka service area is necessary or convenient for the public service.

[123] *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).
[124] *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).
[125] *In Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991); *In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity*, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173, 1994 WL 762882, *3 (Mo. P.S.C. 1994). These factors are sometimes referred to as the “*Tartan* factors.”
[126] *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Commission of State of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003).
[127] *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).

O. If no party timely objects to a nonunanimous stipulation and agreement, the Commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.[128]

IV. Decision

MAWC requests permission, approval, and CCNs to own, acquire, construct, operate, control, manage, and maintain the water and sewer systems for the area currently served by Eureka. In order to be granted CCNs to provide water and sewer service in the existing Eureka service areas, MAWC must show that it is qualified to own and operate Eureka's assets. The Commission traditionally determines if a company is qualified to become a public utility by analyzing the Tartan factors. The Tartan factors contemplate: (1) the need for service, (2) the utility's qualifications, (3) the utility's financial ability, (4) the feasibility of the proposal, and (5) promotion of the public interest.

As evidence of the need for the service, Eureka has been providing its citizens with water and wastewater service for 63 years, and that need will continue into the future for the growing community. By virtue of its track record with other water and sewer systems, MAWC has demonstrated over the years that it is qualified to own and operate the Eureka water and wastewater systems.

By drawing upon its capital, rather than using external financing to acquire Eureka's systems, and by demonstrating, over many years, that it has adequate resources to operate systems similar to those of Eureka, MAWC possesses the financial ability to purchase and operate the Eureka systems. While the prudence of specific

[128] 20 CSR 4240(2)(C).

investments will be addressed in a future rate case, overall, the acquisition as proposed by MAWC is feasible.

In past cases, the Commission has indicated that positive findings with respect to the first four Tartan factors will, in most instances, support a finding that the fifth factor – promotion of the public interest – has been satisfied.[129] However, this is a position that has not yet been adopted by the courts. OPC argues that "[a]lthough the Commission has applied the Tartan Factors in deciding whether to grant a CCN, Missouri court cases . . . make clear that the primary consideration is the 'public interest'."[130] The courts recognize that criteria as to when a CCN is necessary or convenient for the public service is not specified in the statute, leaving it to the discretion of the Commission.[131]

By virtue of 67% support for the ballot proposal asking whether to grant the city authority to sell its water and sewer utilities to MAWC for a total of $28 million – both in the city as a whole and in the precinct that includes the Arbors subdivision – the citizens of Eureka expressed their preference that Eureka sell the utilities to MAWC. The public interest is also promoted by MAWC – a company with the financial ability and expertise to operate, maintain, and make needed repairs and improvements to Eureka's water and sewer systems – taking over those systems.

However, the Commission has several concerns with the manner in which an appraised value was determined for Eureka's water and sewer systems. First, the

[129] *Missouri-American's Initial Brief*, p. 9, citing 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)*.
[130] *Initial Post-Hearing Brief* (OPC), p. 7, citing *State ex rel. Elec. Co. v Atkinson*, 204 S.W. 897, 899 (Mo. Banc 1918); *Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n*, 515 S.W.3d 754, 759-760; *State ex rel. Pub. Water Supply Dist. No. 8 v. Pub. Serv. Comm'n*, 600 S.W.2d 147, 154.
[131] See, e.g., *Matter of Application of KCP&L Greater Mo. Operations, et al. v. Mo. Pub. Serv. Comm'n, et al.*, 515 S.W.3d 754, 759, citing *State ex re. Ozark Elec. Co-op v. Pub. Serv. Comm'n*, 527 S.W.2d, 390, 394 and *State ex re. Intercon Gas, Inc. v. Pub. Serv. Comm'n*, 848 S.W.2d 593, 597-98.

appraisers relied on a report from Flinn Engineering (the Revised Flinn Engineering Report) that evaluated the condition of the Eureka water and sewer systems without the benefit of a prior on-site inspection of the facilities. Instead, Kelly Simpson of Flinn Engineering relied, at least in part, on exterior photos of buildings, water storage tanks, etc. Despite never seeing any of the components of either the water system or the sewer system and despite reviewing no maintenance records, environmental compliance reports, or inflow and infiltration studies, the Revised Flinn Engineering Report provided to the appraisers concluded that, "[o]verall the water and wastewater systems appear to be in good condition and well-maintained." This opinion undoubtedly led the appraisers to compare the Eureka systems to other water and sewer systems also deemed in good condition as a part of their determination of a fair market value for the Eureka water and sewer systems. Reliance on this report potentially calls into question the appraisal results.

Second, the Commission has concerns with both the manner in which the three appraisers were selected and the contact that MAWC had with the appraisers prior to the issuance of both the Initial Appraisal Report on January 20, 2020, and the Final Appraisal Report on March 23, 2020. The contact between MAWC and the appraisers suggests that the appraisers were not fully "independent, impartial, and objective," as required by the USPAP and Section 393.320.3(2)a (by virtue of its reference to the USPAP). Particularly troubling is that the appraisers gave MAWC an opportunity to review a draft of the Initial Appraisal Report before providing the final version to Eureka, as required by the statute. Despite these irregularities, however, there is no evidence in the record that the appraisers were not disinterested persons, nor is there expert testimony in the record that the appraisers violated the USPAP as to independence, impartiality, and objectivity.

Third, and most concerning to the Commission, is that the appraisers determined per-customer fair market values for the Eureka water and sewer systems without any substantiated explanation. Neither the Final Appraisal Report nor any other evidence provides an explanation of the reasoning behind the per-customer fair market values that were determined. The $4,500 per customer fair market value determined by the appraisers for Eureka's water system is 8.25% higher than the next highest comparable water system sale used in the appraisers' analysis. Yet, even when directly asked during the hearing, one of the three appraisers could not identify a single factor about the Eureka system that supported the increased value over any of the comparable systems. There simply is no evidence in the record giving an explanation as to why the appraisers concluded that $4,500 was the per-customer fair market value of Eureka's water system. This does not appear to meet the standard under the USPAP, which requires an appraisal provide "the reasoning that supports the analyses, opinions, and conclusions" of the appraisal. But, again, there is no expert testimony in the record indicating that the appraisers violated the USPAP.

Fourth, because Section 393.320, RSMo, will establish the amount all of MAWC's ratepayers will pay in the future for the systems, the planned construction of a five-mile water transmission main that would transfer water from MAWC's St. Louis County water distribution system to Eureka and relegate Eureka's wells to use as a backup supply, arguably, should have been considered in the appraisal. Future use is relevant to determining what promotes or is detrimental to the public interest. In addition, an argument can also be made that USPAP Rule 1-4(f) required the appraisers in this matter to consider the effects of MAWC's planned improvements to the water system on the

appraised value of the system. However, there is no expert testimony in the record that the appraisers violated USPAP Rule 1-4(f).

The Commission recognizes that, although Section 393.320, RSMo, requires the use of certified general appraisers and that those appraisers must prepare an appraisal of the fair market value of the water system and/or sewer system in question in accordance with the USPAP, the parties in this matter did not list non-compliance with the USPAP in their prehearing joint list of issues for the Commission to decide at the evidentiary hearing, no evidence directly addressing that issue was presented during the hearing, and the parties did not advance that argument in their post-hearing briefs.

Staff calculated a net book value of approximately $10.7 million for Eureka's water system and $7.1 million for the sewer system, or $17.8 million combined, compared to the total appraised fair market value of $28 million. The Commission recognizes that the purpose of Section 393.320, RSMo, is to establish procedures to determine the fair market value of small water utilities when purchased by large water public utilities. Further, the Commission also recognizes that when the small water utility is not a public utility subject to Chapter 386, RSMo, net book value is not relevant to fair market value and municipal systems do not use net book value to account for assets or depreciate assets, as a regulated utility is required to do. Finally, the Commission notes that neither Staff nor OPC offered any evidence as to what the fair market value of the assets should be. Therefore, although the gap between Staff's $18 million net book value and the $28 million appraised value is concerning, MAWC's election to use Section 393.320 to establish the rate base for the Eureka system means that net book value is not relevant to a determination of a small water utility's fair market value under Section 393.320,

RSMo, because if its provisions are complied with the statute requires the use of the lesser of the appraised value or the purchase price to establish the rate base.

The Commission has considered the issue of whether MAWC water and sewer customers, including future Eureka MAWC customers, will, in future rates, be paying for Eureka assets purchased by MAWC that are fully-depreciated and, therefore, for which past Eureka customers have already paid. Likewise, the Commission has considered the inclusion in MAWC's rate base of the value of the water assets in the Arbors CID that have been, and will continue to be, paid for by the lot owners in the Arbors CID through their assessments. However, not only will any effect on future rates be minimal, but all residents of Eureka, including those in the Arbors CID, will receive value through the city's use of the sale proceeds and improvements in their water service, which justifies the minimal $1 per year rate impact.

MAWC has a good track record of operating water and sewer systems efficiently and safely. It has the ability and the intention to make needed repairs and upgrades to Eureka's water and sewer systems. MAWC will be able to provide Eureka's citizens with better tasting water that is less harmful to their water appliances and plumbing. While both Eureka's current customers and MAWC's existing customers in the St. Louis County water customer rate base and the Other Sewer customer rate base may experience increased rates in the future as a result of MAWC's acquisition of Eureka's systems, they will also benefit from having the costs of future projects, as well as routine maintenance, spread among a larger customer base.

The Commission finds that there is a need for water and sewer service in Eureka and MAWC is qualified to provide that service. The Commission finds that MAWC has the financial ability to acquire Eureka's water and sewer systems assets and adequately

operate them in the future and that it is feasible for MAWC to do so. The public interest of the citizens of Eureka, including those in the Arbors CID, was expressed by their approval of the sale. The Commission finds that MAWC's acquisition of Eureka's water and sewer systems promotes, and is not detrimental to, the public interest and will grant MAWC CCNs for the service areas currently served by those systems. The Commission finds that Staff's recommended conditions, agreed to by MAWC, are reasonable and will, therefore, grant the CCNs subject to those conditions.

As discussed above, the Commission has valid concerns in this matter about the appraisal process – the lack of evidence supporting the reasoning that led to the fair market values which are contained in the appraisal; the independence, impartiality and objectivity of the appraisers as required by the USPAP; and, in general, whether the determination of the fair market values was done in accordance with the USPAP. Despite those concerns, the statute is clear that, assuming the statute's procedures were followed, the Commission must use the lesser of the resulting appraised value or the purchase price, together with the reasonable and prudent transaction, closing, and transition costs incurred by MAWC as the ratemaking rate base added for the acquisition of the small water utility. There was no evidence presented that the appraisers were either not certified or not disinterested, and no witness testified that the appraisers failed to follow the USPAP. Had there been expert testimony that the appraised fair market value of the two systems was not done in accordance with the USPAP, the determination of the ratemaking rate base to be added for the Eureka water and sewer systems may have been very different in this matter. Absent that evidence, the Commission finds that the statute mandates that the Commission set the ratemaking rate base for the acquired assets at $18 million for the Eureka water system and $10 million for the Eureka sewer

system.

THE COMMISSION ORDERS THAT:

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

2. The *Partial Stipulation and Agreement* filed with the Commission on January 14, 2022, is approved. It shall be attached to this Order and the signatories are ordered to comply with its terms.

3. Upon closing on the Eureka water and sewer systems, MAWC is granted CCNs to provide water and sewer service in the service areas currently served by Eureka and further described in the revised legal description and service area filed in this matter as Exhibit 5, Schedules BWE-3 and BWE-4, respectively. Said CCNs shall be subject to the following conditions:

a. Rates for customers in the Eureka water service area shall be set at rates equal to the current rates for customers in the MAWC St. Louis County ratemaking rate base; Rates for customers in the Eureka wastewater service area shall be set at rates equal to the current rates for customers in the MAWC Other Sewer ratemaking rate base;

b. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, and service area written description to be included in its EFIS tariff P.S.C. MO No. 13 and 26, applicable to water service and sewer service in the requested service area;

c. MAWC shall notify the Commission of closing on the assets within five (5) days after such closing;

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

e. If MAWC determines that a transfer of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and MAWC shall submit tariff sheets as appropriate that would cancel service area map, legal descriptions, and rate sheets applicable to the Eureka area in its sewer tariff;

f. MAWC shall develop a plan to book all of the Eureka plant assets, with the concurrence of Staff and/or with the assistance of Staff, for original cost, depreciation reserve, and contributions (CIAC) for appropriate plant accounts, along with reasonable and prudent transaction, closing, and transition costs. This plan should be submitted to Staff for review within sixty (60) days after closing on the assets;

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

h. MAWC shall adopt for Eureka water and sewer assets the depreciation rates ordered for MAWC in File No. WR-2020-0344;

i. MAWC shall provide to the Customer Experience Department (CXD) an example of its actual communication with the Eureka service area customers regarding its acquisition and operations of the Eureka water and sewer system assets, and how customers may reach MAWC, within ten (10) days after closing on the assets;

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

k. Except as required by Section 393.320, RSMo, the Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCN to MAWC, including expenditures related to the certificated service area, in any later proceeding;

l. MAWC shall distribute to the Eureka customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;

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

n. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Eureka customers;

o. MAWC shall include the Eureka customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and

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

4. Upon closing, the Commission authorizes MAWC to establish ratemaking rate base in the amount of $18 million for the acquired Eureka water system and a ratemaking rate base in the amount of $10 million for the acquired Eureka sewer system.

5. MAWC is authorized to do and perform, or cause to be done and performed all such acts and things, as well as make, execute, and deliver any and all documents as may be necessary, advisable, and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

6. This report and order shall become effective on July 9, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Ameren Transmission Company of Illinois for a Certificate of Convenience and Necessity Under Section 393.170 RSMo Relating to Transmission Investments in Southeast Missouri	))))))	**File No. EA-2022-0099**

ORDER APPROVING STIPULATION AND AGREEMENT

EVIDENCE, PRACTICE AND PROCEDURE

§8. Stipulation

Parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case, and the Commission may resolve all or any part of a contested case on the basis of a stipulation and agreement. Upon approving a stipulation and agreement, the Commission need not convene a hearing, and need not state its findings of fact and conclusions of law.

§8. Stipulation

A nonunanimous stipulation and agreement is any stipulation and agreement entered into by fewer than all of the parties, but if no party objects to a nonunanimous stipulation and agreement within seven days of its filing with the Commission, then the Commission may treat it as a unanimous stipulation.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 7th day of July, 2022.

In the Matter of the Application of Ameren Transmission Company of Illinois for a Certificate of Convenience and Necessity Under Section 393.170 RSMo Relating to Transmission Investments in Southeast Missouri	))))))	**File No. EA-2022-0099**

ORDER APPROVING STIPULATION AND AGREEMENT

Issue Date: July 7, 2022 Effective Date: July 17, 2022

On December 21, 2021, Ameren Transmission Company of Illinois (ATXI) applied to the Commission for a certificate of convenience and necessity (CCN) that would allow ATXI to construct, acquire, own, operate, and maintain certain transmission facilities in, around, and between the Cities of New Madrid and Sikeston, Missouri (the Project).

The Commission issued notice of the application, and the Commission received an intervention request from Missouri Joint Municipal Electric Utility Commission (MJMEUC). The Commission granted that request.

On June 22, 2022, ATXI, the Staff of the Commission (Staff), and MJMEUC filed a Stipulation and Agreement (Stipulation). The signatories agree that ATXI should receive the requested certificate, subject to certain conditions. The Office of the Public Counsel (OPC) did not sign the Stipulation, but did not object. Commission Rule 20 CSR 4240-2.115(2) allows the Commission to treat a non-unanimous stipulation as unanimous if no party objects.

Due to the Stipulation, this case may be decided without convening a hearing.[1] Also, the Commission need not separately state its findings of fact or conclusions of law.[2]

Based on the Commission's review of the application, supporting testimony, and the Stipulation, the Commission finds ATXI is engaged in the construction, ownership, and operation of interstate transmission lines that transmit electricity for the public use. Thus, ATXI is an electrical corporation and a public utility in Missouri, and the Commission has jurisdiction over ATXI and the Project.

Furthermore, the Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either "necessary or convenient for the public service."[3] The Commission has stated five criteria that it will use when considering an application for certificate of convenience and necessity:

1) There must be a need for the service;

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

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

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

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

The Commission finds that ATIX meets these criteria. Thus, the Commission wil grant the application, and approve the Stipulation, subject to the conditions agreed upon by the Stipulation's signatories.

[1] Section 536.060 RSMo 2016.
[2] Section 536.090 RSMo 201.
[3] Section 393.170, RSMo 2016.
[4] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

THE COMMISSION ORDERS THAT:

1. The application for a certificate of convenience and necessity filed by ATXI is granted, as conditioned below:

a. Throughout the right-of-way acquisition process, ATXI will use all reasonable efforts to follow the route depicted in Schedule SB-D7. But ATXI will be allowed to deviate from the depicted route in two scenarios:

i. First, if surveys or testing do not necessitate a deviation, ATXI may deviate from the Final Proposed Route on a particular parcel if ATXI and the landowner on which the deviation will run agree. Either ATXI or landowner may initiate such a request to deviate.

ii. Second, if ATXI determines that surveys or testing require a deviation, ATXI will negotiate in good faith with the affected landowner and if agreement can be reached, ATXI may deviate from the depicted route on that parcel, as agreed with the affected landowner.

b. With respect to any parcel other than the identified parcels on the Final Proposed Route where ATXI desires to locate the line, whether because testing or surveys necessitate acquisition of an easement on that parcel or for other reasons (e.g., a request from adjacent landowners), ATXI will negotiate in good faith with the landowner of the affected parcel over which ATXI has determined an easement is needed or desired and, if agreement is reached, may deviate from the Final Proposed Route by locating the line on the affected parcel but will notify the Commission of the deviation and parcels affected prior to construction on that parcel. If testing or surveys

necessitate acquisition of an easement on such other parcel and agreement is not reached, despite good faith negotiations, ATXI will file a request with the Commission to allow it to deviate from the Final Proposed Route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to ATXI by the owner(s). ATXI shall fully explain in that request why ATXI determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved is given to the owner, Staff, and OPC, as well as an opportunity to respond, the Commission will grant or deny the request.

c. Absent a voluntary agreement for the purchase of the property rights, the transmission line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement requiring, for electrical code compliance purposes, the owners to move or relocate from the property.

d. Prior to the commencement of construction on a parcel, ATXI will secure an easement that will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for each affected parcel. In addition, ATXI will track each

easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the Project, ATXI will file a copy of the spreadsheet with the Commission, to which a map will be attached. For each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

e. ATXI shall file with the Commission and follow standard construction, clearing, maintenance, repair, and right-of-way practices.

f. ATXI shall file with the Commission in this case all required government approvals and permits—e.g., any applicable land disturbance permits, Missouri State Highway Commission permits, or US Army Corps of Engineers permits—before beginning construction on that part of the project where the approvals and permits are required.

g. ATXI shall file with the Commission the annual report it files with the Federal Energy Regulatory Commission.

h. ATXI shall file with the Commission in this case the final Operations and Maintenance Plan.

2. The Stipulation, which is Exhibit 1 to this order, is approved, and the signatories of the Stipulation shall comply with its terms.

3. This order shall become effective on July 17, 2022.

4. This file shall be closed on July 18, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Pridgin, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Ameren Transmission Company of Illinois for a Certificate of Convenience and Necessity under Section 393.170, RSMo relating to Transmission Investments in Southeast Missouri.	))))))	File No. EA-2022-0099

STIPULATION AND AGREEMENT

COMES NOW Ameren Transmission Company of Illinois ("ATXI"), on behalf of itself, the Staff of the Missouri Public Service Commission ("Staff") and the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") (collectively, the "Parties"[1]), by and through undersigned counsel, and for this Stipulation and Agreement ("Stipulation"), respectfully state as follows to the Missouri Public Service Commission (the "Commission"):

STIPULATION OF FACTS AND PARTY REPRESENTATIONS

1. ATXI, pursuant to section 393.170 RSMo., 20 CSR 4240-2.060, and 20 CSR 4240-20.045, made this application to the Commission for a certificate of convenience and necessity (CCN) and related approvals authorizing ATXI to construct, acquire, own, operate and maintain certain components of transmission facilities in, around, and between the Cities of New Madrid and Sikeston, Missouri (the cumulative development being referred to as the "Project").

2. The Project is a collaborative effort between ATXI, Sikeston Board of Municipal Utilities ("SBMU"), the City of New Madrid ("New Madrid") and MJMEUC.

[1] The Office of the Public Counsel ("OPC"), while not a signatory to this Stipulation, has indicated that it does not oppose it.

3. In pre-filed testimony, the Parties described the scope and components of the Project and addressed the Project economics. In addition to the pre-filed testimony, the Parties stipulate and agree to the following facts and representations.

4. The components of the Project which are subject to the Commission's jurisdiction are:

a. Construction of those portions of the Comstock Substation[2] in which ATXI will retain an interest, at an estimated cost of $5.4 million;

b. Construction and modification of those transmission lines[3] adjacent to the new Comstock substation in which ATXI will retain an interest, at an estimated cost of approximately $123,000;

c. Construction of an approximately 1.2-mile long single circuit 161 kV transmission line,[4] at an estimated cost of approximately $700,000; and

d. Acquisition of an interest in the existing 28-mile 161 kV line owned by SBMU,[5] at a cost of $510,000.

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[2] The Comstock substation. ATXI will construct a new eight-position, 161 kV breaker substation on a parcel owned by Sikeston. This new substation will be owned jointly by ATXI, SBMU and MJMEUC. Once constructed, SBMU will acquire from ATXI discrete assets within the substation as well as 64% of the common substation assets. SBMU will use those assets to continue serving its retail customers' load located outside of MISO, as well as exporting power to wholesale customers in the SPP, MISO and AECI regions. ATXI and MJMEUC will jointly own the remaining breakers, which MISO will functionally control, as well as the remaining 36% of substation common assets.

[3] The Area Connections. To connect the Comstock substation to the existing system, ATXI will need to construct or modify six transmission lines adjacent to the new Comstock substation to connect the new substation to the grid. At the conclusion of the Project, ATXI and MJMEUC will have a cumulative 25% interest in the individual Area Connection that will connect the Existing Line (defined below) with the Comstock substation. SBMU will own and maintain the Area Connections that will connect the Comstock substation with the Southwestern Power Administration ("SWPA") substation and with SBMU's other facilities. Ameren Missouri will continue to own the line connections that will be re-terminated into the Comstock substation.

[4] The New Line. ATXI will construct an approximately 1.2 mile-long single circuit 161kV transmission line extending east from the Existing Line to the existing New Madrid substation just outside of New Madrid. ATXI and MJMEUC will own the New Line, and SBMU will operate and maintain the New Line. The New Line will be under MISO's functional control.

[5] The Existing Line. SBMU owns an approximately 28-mile, 161 kV transmission line that extends south from SWPA's Sikeston substation and terminates at AECI's existing New Madrid substation. ATXI will

5. SBMU and New Madrid's retail rates and siting authority are regulated by their respective governing bodies (Relevant Electric Retail Regulatory Authorities ("RERRA"). MJMEUC represents that the RERRAs for both SBMU and New Madrid are expected to approve the Project, with ATXI as a participant, once ATXI receives authority from the Commission.

6. MJMEUC's wholesale transmission rates are regulated by the Federal Energy Regulatory Commission ("FERC"). MJMEUC intervened in the present case to provide additional information for the Commission's consideration of ATXI's CCN application. Prior to the operation date of the Project, MJMEUC will apply at FERC for a MISO transmission formula rate, which will be beneficial to the Ameren Missouri Transmission Pricing Zone given MJMEUC's tax exempt status.[6]

7. With respect to North American Electric Reliability Corporation ("NERC") compliance obligations, ATXI will be the Transmission Owner ("TO") for the New Line and for the Comstock substation and will be the Project Transmission Operator ("TOP") and Project Transmission Planner ("TP") for all Project components. This means ATXI will be responsible for the provision of operation services for the Project and will have NERC compliance responsibilities for most of the Project components. ATXI is already a TO, TP and TOP.

8. MJMEUC will own a passive, undivided interest in the Project and will submit its formula rate for FERC approval, but will not be responsible for day-to-day operations nor NERC compliance for this Project. Sikeston will be the TO for the Sikeston Owned Area Connections

acquire a 12.75% undivided interest in the Existing Line. MJMEUC will acquire a 12.25% undivided interest in the Existing Line. In total, ATXI and MJMEUC will acquire a 25% interest in the Existing Line. SBMU will continue to operate and manage the Existing Line.

[6] That case will be similar to FERC docket ER22-709, which reflects MJMEUC's SPP formula rate, and to which the Commission is a party.

and the Existing Line and will thus have some responsibility for NERC compliance for these components. In general, compliance costs and obligations are substantial for entities like Sikeston and MJMEUC who do not have the scale in this area, and ATXI's willingness to bear such burden is a significant benefit of ATXI's participation in the Project.

9. MJMEUC represents that a benefit of ATXI involvement in the Project is that ATXI's role as a TOP enables MJMEUC, SBMU, and New Madrid from taking on the additional administrative costs and risks that are attendant to TOP status.

10. MJMEUC represents that the relevant portions of the Project will allow SBMU to facilitate direct service to its own load with its own generation and avoid incurring costs in excess of $7,000,000 annually in new transmission charges associated with SWPA and Southwest Power Pool ("SPP").

11. MJMEUC represents that New Madrid is currently served by two (2) 69kV lines owned by New Madrid that are connected to a SWPA substation. MJMEUC represents that that SWPA substation connection is at a 161/69kV transformer that serves both New Madrid's 69 kV lines and the local cooperative system and since the substation serves both New Madrid and the local cooperative distribution system, that substation is already at the limits of its capacity to serve New Madrid. MJMEUC represents that this limitation on capacity to serve New Madrid load limits both the load growth and reliability of New Madrid for serving current loads, and extremely limits the ability to add additional industrial load. MJMEUC represents that the addition of the relevant components of the Project, including the direct 161 kV connection to MISO facilities, enhances New Madrid's reliability and access to MISO.

12. MJMEUC represents that the Project will allow New Madrid more lower costs options for supply and other services and planning options that will allow New Madrid flexibility in the future to pursue economic development.

AGREEMENTS

13. Contingent upon Commission approval of this Stipulation without modification, the Parties hereby agree as follows.

14. The Parties agree that, to settle the CCN Application, ATXI will agree to the following conditions for issuance of the CCN, as follows:

a. Throughout the right-of-way acquisition process, ATXI will use all reasonable efforts to follow the route depicted in Schedule SB-D7. But ATXI will be allowed to deviate from the depicted route in two scenarios:

i. First, if surveys or testing do not necessitate a deviation, ATXI may deviate from the Final Proposed Route on a particular parcel if ATXI and the landowner on which the deviation will run agree. Either ATXI or landowner may initiate such a request to deviate.

ii. Second, if ATXI determines that surveys or testing require a deviation, ATXI will negotiate in good faith with the affected landowner and if agreement can be reached, ATXI may deviate from the depicted route on that parcel, as agreed with the affected landowner.

b. With respect to any parcel other than the identified parcels on the Final Proposed Route where ATXI desires to locate the line, whether because testing or surveys necessitate acquisition of an easement on that parcel or for other reasons (e.g., a request from adjacent landowners), ATXI will negotiate

in good faith with the landowner of the affected parcel over which ATXI has determined an easement is needed or desired and, if agreement is reached, may deviate from the Final Proposed Route by locating the line on the affected parcel but will notify the Commission of the deviation and parcels affected prior to construction on that parcel. If testing or surveys necessitate acquisition of an easement on such other parcel and agreement is not reached, despite good faith negotiations, ATXI will file a request with the Commission to allow it to deviate from the Final Proposed Route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to ATXI by the owner(s). ATXI shall fully explain in that request why ATXI determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved is given to the owner, Staff, and OPC, as well as an opportunity to respond, the Commission will grant or deny the request.

c. Absent a voluntary agreement for the purchase of the property rights, the transmission line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement

requiring, for electrical code compliance purposes, the owners to move or relocate from the property.

d. Prior to the commencement of construction on a parcel, ATXI will secure an easement that will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for each affected parcel. In addition, ATXI will track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the Project, ATXI will file a copy of the spreadsheet with the Commission, to which a map will be attached. For each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

e. ATXI shall file with the Commission and follow standard construction, clearing, maintenance, repair, and right-of-way practices.

f. ATXI shall file with the Commission in this case all required government approvals and permits—e.g., any applicable land disturbance permits, Missouri State Highway Commission permits, or US Army Corps of Engineers permits—before beginning construction on that part of the project where the approvals and permits are required.

g. ATXI shall file with the Commission the annual report it files with the Federal Energy Regulatory Commission.

h. ATXI shall file with the Commission in this case the final Operations and Maintenance Plan.

15. Based on the information contained in the pre-filed testimony, the information provided in this Stipulation, and ATXI's agreement to the conditions above, Staff recommends the Commission grant ATXI a CCN authorizing ATXI to construct, acquire, own, operate and the components of the Project which are subject to the Commission's jurisdiction:

a. Construction of those portions of the Comstock Substation in which ATXI will retain an interest, at an estimated cost of $5.4 million;

b. Construction and modification of those transmission lines adjacent to the new Comstock substation in which ATXI will retain an interest, at an estimated cost of approximately $123,000;

c. Construction of an approximately 1.2-mile long single circuit 161 kV transmission line, at an estimated cost of approximately $700,000; and

d. Acquisition of an interest in the existing 28-mile 161 kV line owned by SBMU, at a cost of $510,000.

16. Based on their knowledge of the facts and circumstances, review and analysis of the applicable law, and consideration of all relevant interests and the risk of litigation, the Parties hereby recommend to the Commission that this Stipulation be approved by the Commission without modification.

17. The Parties further agree and recommend that the Commission approve ATXI's Application, subject to the terms of this Stipulation.

GENERAL TERMS

18. This Stipulation has resulted from negotiations among the Parties and the terms hereof are interdependent. In the event the Commission does not approve this Stipulation, or approves it with modifications or conditions to which a Party objects, then this Stipulation shall be null and void, and no Party shall be bound by any of its provisions.

19. Except as specifically provided herein, no Party shall be prejudiced or bound in any manner by the terms of this Stipulation in any other proceeding, regardless of whether this Stipulation is approved.

20. The Parties agree that this Stipulation resolves all issues in this case. The Parties therefore consent to the admission of all written testimony that has been filed in this current Commission Action and request that the Commission admit all such written testimony into the record in this proceeding, without the need for witnesses sponsoring pre-filed testimony to take the stand. Each party waives their right to cross-examine such witnesses.

21. If the Commission accepts and approves the specific terms of this Stipulation without condition or modification, the Parties waive their respective rights to present oral argument and written briefs pursuant to RSMo. § 536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to § 536.080.2, their respective rights to seek rehearing pursuant to § 386.500, and their respective rights to judicial review pursuant to § 386.510. This waiver applies only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior orders, to subsequent Commission proceedings, or to any matters not explicitly addressed by this Stipulation.

WHEREFORE, the Parties respectfully request that the Commission issue an order in this case approving the Stipulation subject to the specific terms and conditions contained herein.

IN WITNESS WHEREOF, the Parties have executed and approve the terms of this Stipulation, effective as of June 22, 2022, by subscribing their signatures below.

Respectfully Submitted,

By: */s/ Albert D. Sturtevant*
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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June 2022, a copy of the foregoing **Stipulation and Agreement** has been served on all parties on the official service list for this matter via filing in the Commission's EFIS system and/or email.

/s/ Albert D. Sturtevant
Albert D. Sturtevant

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of The Empire District Electric Company's Submission of Its Interim Report Regarding Participation in the Southwest Power Pool, Inc.	))))	**File No. EO-2012-0269**

ORDER GRANTING MOTION FOR EXTENSION OF CONDITIONAL APPROVAL OF MEMBERSHIP IN THE SOUTHWEST POWER POOL

ELECTRIC

§9. Jurisdiction and powers of the State Commission

The utility asked the Commission to extend authorization for it to participate in SPP for an additional two years. The Commission granted the unopposed motion.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of July, 2022.

In the Matter of The Empire District Electric Company's Submission of Its Interim Report Regarding Participation in the Southwest Power Pool, Inc.	))))	**File No. EO-2012-0269**

ORDER GRANTING MOTION FOR EXTENSION OF CONDITIONAL APPROVAL OF MEMBERSHIP IN THE SOUTHWEST POWER POOL

Issue Date: July 21, 2022 Effective Date: July 31, 2022

This case concerns The Empire District Electric Company d/b/a Liberty's continued membership in the Southwest Power Pool (SPP). On September 11, 2013, the Commission approved a stipulation and agreement that provided for Liberty's continued participation in SPP through August 1, 2019. That stipulation and agreement contained provisions that required Liberty to undertake a cost/benefit study and prepare an interim report aimed at determining whether Liberty's participation in SPP should be approved beyond that date. In an order issued on March 1, 2017, the Commission extended that participation date until August 1, 2022. The 2017 order also required Liberty to file a 2021 interim report containing a completed cost/benefit study regarding Liberty's continued participate in SPP by April 30, 2021. On May 19, 2021, the Commission indefinitely stayed Liberty's obligation to file that study pending further order of the Commission, but did not extend the August 1, 2022 participation date.

On July 17, 2022, Liberty filed a motion asking the Commission to extend the interim and conditional approval of Liberty's membership in SPP for an additional two

years, from August 1, 2022, to August 1, 2024. The motion explains that the additional time will allow for possible agreement among the parties regarding further extension of Liberty's membership in SPP.

The Commission ordered that any party wishing to respond to Liberty's motion do so by July 20, 2022. The Commission's Staff filed a response on July 20, 2022. Staff does not oppose the requested extension of authority, but asks the Commission to also order Liberty to conduct specified studies and make certain filings recommended in Staff's report filed on June 11, 2021 in a related working case, File Number EW-2021-0104. Staff's recommendations in the working case would apply to all Missouri's investor-owned electric utilities, not just Liberty, and the Commission has never required any utility to respond to those recommendations. The Commission will not separately order Liberty to conduct those studies and make those filings in this case, but will further address Staff's recommendations in a subsequent order that will be issued in the working case.

Having considered the motion, and noting the rapidly approaching expiration of Liberty's authorization to maintain its membership in SPP, the Commission determines that an extension of Liberty's authorization is appropriate. The Commission will grant Liberty's motion. The Commission finds it reasonable to make this order effective in less than thirty days so it will be effective before the expiration of Liberty's authority to participate in SPP.

THE COMMISSION ORDERS THAT:

1. The interim and conditional approval of Liberty's membership in SPP is extended by two years to August 1, 2024.

2. This order shall be effective on July 31, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water and Sewer System in an area of Pettis County, Missouri (Monsees Lake Estates Subdivision)	)))))))	**File No. WA-2022-0229**

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

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.” The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§23. Notice and hearing

The Commission ordered notification of a pending rate case within an acquisition case.

WATER

§1. Generally

§2. Certificate of convenience and necessity

The Commission ordered notification of a pending rate case within an acquisition case.

§2. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.” The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.

§2. Certificate of convenience and necessity
§4. Transfer, lease and sale
Section 393.170.2, RSMo (Supp. 2021), requires a water company to have a Certificate of Convenience and Necessity (CCN), which is granted by the Commission, prior to providing service.

RATES

§67. Publication and notice
The Commission ordered notification of a pending rate case within an acquisition case.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of July, 2022.

In the Matter of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water and Sewer System in an area of Pettis County, Missouri (Monsees Lake Estates Subdivision)	)))))))	**File No. WA-2022-0229**

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

Issue Date: July 21, 2022 Effective Date: August 20, 2022

Procedural history

On February 25, 2022, Missouri-American Water Company (MAWC) filed an application (Application) regarding the acquisition of an existing unregulated water and sewer system in an area of Pettis County, Missouri (Monsees Lake Estates Subdivision). The Monsees Lake Estates Subdivision Homeowners Association, which is the owner and operator of the water and sewer system, overwhelmingly approved selling those assets to MAWC. That approval occurred in an October 11, 2020, Monsees Lake Estates Subdivision Homeowners Association vote.[1] If the Commission approves the Application, MAWC would provide service for Monsees Lake Estates Subdivision's 60 water and 60 sewer customers.[2]

[1] The vote was held at the subdivision's annual meeting and pursuant to the Bylaws of Monsees Lake Estates Subdivision Homeowners Association.
[2] The customer counts are approximate and identified at the time of filing of the Application. Application and Motion for Waiver, filed February 25, 2022, para. 5.

MAWC requested Certificates of Convenience and Necessity (CCNs) to install, own, acquire, construct, operate, control, manage, and maintain the water and sewer system in Monsees Lake Estates Subdivision. On March 25, 2022, MAWC filed an amendment to its Application, which the Commission accepted. Lastly, MAWC requested a waiver of the 60-day notice of case filing requirement.

The Commission issued notice and set a deadline for intervention requests, but received no requests to intervene. On June 9, 2022, the Staff of the Commission (Staff) filed its recommendation to grant a CCN, subject to certain conditions. On June 21, 2022, MAWC stated it had no objection to Staff's recommendation and conditions. On June 24, 2022, Staff filed a correction to its recommendation. MAWC responded that it agrees with the correction, and continued to have no objection.

On June 28, 2022, the Office of the Public Counsel (OPC) requested the Commission order MAWC to provide additional notice to the Monsees Lake Estates Subdivision customers of MAWC's pending general rate case. The Commission allowed time for responses, and received only one response. MAWC replied with suggested compromise language, and an offer to include the language within its letter to the Monsees Lake Estates Subdivision customers upon closing of the purchase of the new system. OPC responded that it had no objection to MAWC's compromise language, and no objection to including the compromise language in MAWC's closing letter.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.[3] Thus, the Commission will make a determination on the Application.

[3] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

Decision

MAWC is a “water corporation,” a “sewer corporation,” and “public utility” as those terms are defined in Section 386.020, RSMo (Supp. 2021), and is subject to the jurisdiction of the Commission.

Section 393.170.2, RSMo (Supp. 2021), requires MAWC to have CCNs, which are granted by the Commission, prior to providing water or sewer service in the Monsees Lake Estates Subdivision service area. Section 393.170.3, RSMo (Supp. 2021), in setting forth the standard for the granting of CCNs, requires that the Commission determine that the services are “necessary or convenient for the public service.” The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.[4] It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.[5] Pursuant to Section 393.170.3, RSMo (Supp. 2021), the Commission may impose the conditions it deems reasonable and necessary for the grant of a CCN.

The Monsees Lake Estates Subdivision water and sewer system was installed by the developer of the subdivision. The first well for the water system was constructed in 1968. The wastewater treatment facility was originally constructed in 1967. Subsequently, the developer transferred ownership and operation of the water and sewer system to the Monsees Lake Estates Subdivision Homeowners Association as contributed plant.

[4] *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).
[5] *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

In its most recent inspection report from the Department of Natural Resources (DNR) dated April 2, 2020, the Monsees Lake Estates Subdivision water system received one unsatisfactory finding and five recommendations. None of DNR's concerns with the water system have been addressed as of May 9, 2022.

DNR issued the Monsees Lake Estates Subdivision sewer system a Schedule of Compliance (SOC) on February 17, 2017, setting new effluent limits for ammonia and *E. coli*, and directed compliance to occur in no later than four years following. No upgrades were made as directed, and as a result the sewer system consistently exceeds the *E. coli* limits.

On December 17, 2018, DNR's most recent inspection of the Monsees Lake Estates Subdivision sewer system resulted in an unsatisfactory finding regarding the slopes of the lagoon cells. The slopes have erosion damage and damage from animals burrowing. DNR recommended repair and the use of riprap to prevent future damage. On April 8, 2022, Staff inspected the sewer system and noted the same issues with the lagoon cells, among others. None of DNR's concerns with the sewer system have been addressed.

To address these concerns, MAWC submitted a systematic, planned approach to resolve known water and sewer system compliance issues. For the sewer system, MAWC plans improvements and maintenance to address the effluent flow limitations, and add disinfection to meet *E. coli* limits. MAWC also stated it would address the lagoon damage, and investigate land application of the sludge to nearby farm fields. The Commission notes that the prudence of specific investments will be addressed in a future rate case.

Staff prepared an estimate of rate base, but presented it for informational purposes only. A Commission decision regarding rate base in this case is not necessary. The determination of the value of any acquisition adjustment will be made in MAWC's next general rate filing if it seeks recovery of capital and expense costs related to this water and sewer system.

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."[6] The Commission articulated criteria to be used when evaluating applications for utility certificates of convenience and necessity in *In Re Intercon Gas, Inc.*[7]

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]

There is a need for the service, as the residents of Monsees Lake Estates Subdivision currently make use of the existing water and sewer system. MAWC is qualified to provide the service**,** as it already provides water service to approximately 474,000 Missouri customers, and sewer service to approximately 16,500 Missouri customers. MAWC has the financial ability to provide the service because no external

[6] Section 393.170.3, RSMo (Supp. 2021).
[7] 30 Mo P.S.C. (N.S.) 554, 561 (1991).
[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).

financing is anticipated. The proposal is economically feasible according to MAWC's feasibility study, which is realistic given MAWC's prior experience and past performance. The proposal promotes the public interest by ensuring the water and sewer system are improved and maintained sufficiently to meet DNR requirements.

The Commission finds that there is a need for water and sewer service in Monsees Lake Estates Subdivision and MAWC is qualified to provide that service. The Commission finds that MAWC has the financial ability to acquire Monsees Lake Estates Subdivision's water and sewer systems assets and adequately operate them in the future and that it is feasible for MAWC to do so. The Commission finds that the public interest is served by improving and maintaining the systems sufficiently to meet DNR requirements. The Commission finds that MAWC's ownership and operation of the Monsees Lake Estates Subdivision water and sewer system is necessary and convenient to the public service of the Monsees Lake Estates Subdivision water and sewer system customers. Therefore, the Commission will grant MAWC CCNs for the service areas currently served by those systems. The Commission finds that Staff's recommended conditions, agreed to by MAWC, are reasonable and will, therefore, grant the CCNs subject to those conditions.

As to the additional customer notification requested by OPC, the Commission agrees with OPC. The Monsees Lake Estates Subdivision customers have not been informed of MAWC's pending rate case and should be. Through no party's fault, the Monsees Lake Estates Subdivision customers were not informed of MAWC's pending rate case, which was filed July 1, 2022. The Commission finds OPC's request for additional notification to be reasonable, and will grant it.

In response to OPC's request, MAWC submitted compromise language to notify the Monsees Lake Estates Subdivision customers, and suggested including it in MAWC's closing letter, which is a letter it sends to new customers upon its acquisition of a new water or sewer system (when the purchase closes). OPC responded that it had no objection to the compromise language. OPC also stated it had no objection to the inclusion in MAWC's closing letter.

The Commission finds MAWC's un-objected compromise language to be reasonable, and will grant MAWC's request to use it. The Commission finds MAWC's un-objected suggestion to include the compromise language in its closing letter to be reasonable, and will grant it.

MAWC's Application also asked the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). The Commission finds good cause exists for waiver based on MAWC's verified declaration that it had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its Application.

THE COMMISSION ORDERS THAT:

1. The 60-day notice of case filing requirement is waived for good cause found pursuant to 20 CSR 4240-4.017(1)(D).

2. MAWC is granted a certificate of convenience and necessity to provide water and sewer service in the Monsees Lake Estates Subdivision described in the map and legal description MAWC provided to Staff, subject to the conditions and requirements contained in Staff's recommendation, including the filing of tariffs, as set out below:

    a. MAWC shall adopt the current water rate of the Monsees Lake Estates Subdivision at $35.30 per month;

b. MAWC shall adopt the current sewer rate of the Monsees Lake Estates Subdivision at $58.00 per month;

c. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively;

d. MAWC shall notify the Commission of closing on the assets within 5 days after such closing;

e. If closing on the water and sewer system assets does not take place within 30 days following the effective date of this Commission order, MAWC shall submit a status report within 5 days after this 30-day period regarding the status of closing and additional status reports within 5 days after each additional 30-day period until closing takes place, or until MAWC determines that the transfer of the assets will not occur;

f. If MAWC determines that a transfer of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and MAWC shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Monsees Lake Estates Subdivision service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the Monsees Lake Estates Subdivision service area in both the water and sewer tariffs;

g. MAWC shall keep its financial books and records for all utility capital related costs accounts and operating expenses in accordance with the NARUC Uniform System of Accounts;

h. MAWC shall utilize the depreciation rates ordered for it in File No. WR-2020-0344 for the Monsees Lake Estates Subdivision system assets;

i. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Monsees Lake Estates Subdivision water and sewer system customers, and MAWC shall provide training to its call center personnel regarding MAWC’s transaction fee procedures established after File No. WR-2020-0344;

j. MAWC shall update all of its future communications with Missouri customers, particularly but not exclusively its overdue/discontinuance notices, informational brochures, and website, to accurately reflect MAWC's current policies regarding debit/credit card transaction fees, within ten (10) business days after closing on the assets;

k. MAWC shall revise its informational brochure to bring it into full compliance with Commission Rule 20 CSR 4240-13.040(3) within ten (10) business days after closing on the assets;

l. MAWC shall inform its customers, by using a bill message, that the customer rights and responsibilities section of its website has been updated, and that customers may call in to request an updated brochure, for three (3) monthly billing statements after the updates are completed, and to send a sample bill for each month to the Commission's Customer Experience Department (CXD) Staff;

m. MAWC shall include the Monsees Lake Estates Subdivision water and sewer system customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets;

n. MAWC shall distribute to the Monsees Lake Estates Subdivision customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water and sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13.040(3), within thirty (30) days of closing on the assets;

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

p. MAWC shall file a notification in this case in EFIS when it opens its business office at 1705 Montserrat Park, Warrensburg, MO 64093;

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

r. MAWC shall file notice in this case outlining completion of the above recommended training, customer communications, and notifications within ten (10) business days after such communications and notifications are complete.

3. MAWC is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the Application.

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

5. OPC's request for additional notice be provided to the Monsees Lake Estates Subdivision customers is granted. MAWC shall provide notice to the Monsees Lake Estates Subdivision customers in a closing letter that MAWC sends to new customers upon a purchase closing

6. MAWC's request to use its compromise language in the additional notice requested by OPC is granted. MAWC shall include the following language (submitted in MAWC's request), or language that is substantially similar to the following:

> MAWC has adopted and will use Monsees' current water and sewer rates until those rates are changed by the Missouri Public Service Commission. MAWC has filed a rate case before the Missouri Public Service Commission, File Nos. WR-2022-0303 and SR-2022-0304, in which the Monsees' rates will be reviewed. It is expected that any change in rates as a result of these cases would be effective by June 1, 2023.

7. This order shall become effective on August 20, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Timber Creek Sewer Company for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, Control and Manage a Sewer System in Clay County, Missouri as an Expansion of its Existing Certificated Areas	)))))))	**File No. SA-2022-0338**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

SERVICE

§3. Obligation of the utility
§18. Duty to render adequate service
The five Tartan criteria are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

SEWER

§2. Certificate of convenience and necessity
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. Certificate of convenience and necessity
The Commission applies the five “Tartan Criteria” established in In the Matter of Tartan Energy Company, et al., 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN.

§2. Certificate of convenience and necessity
§7. Jurisdiction and powers of the State Commission
Sewer corporations and public utilities are subject to the jurisdiction and supervision of the Commission as provided under Section 386.250, RSMo.

§28. Rules and regulations
The Commission may waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) if the moving party files an affidavit stating that it has had no communication with the office of the Commission within the preceding 150 days regarding the subject matter of the application, pursuant to Rule 20 CSR 4240-4.017(1)(D).

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 July, 2022.

In the Matter of the Application of Timber Creek Sewer Company for a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, Control and Manage a Sewer System in Clay County, Missouri as an Expansion of its Existing Certificated Areas	)))))))	**File No. SA-2022-0338**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: July 27, 2022 Effective Date: August 26, 2022

On June 1, 2022, Timber Creek Sewer Company (Timber Creek) filed an application seeking a certificate of convenience and necessity (CCN) authorizing it to construct, operate, maintain, and manage a sewer system in Clay County, Missouri, as an expansion of its existing certificated area known as Johnson Ridge. On June 9, 2022, the Commission ordered the Commission's Staff to file a recommendation regarding Timber Creek's CCN application no later than July 14, 2022. The Commission issued notice and set a deadline for intervention requests, but received none. On July 14, 2022, Staff filed its recommendation in which it recommended the Commission grant Timber Creek's application with certain conditions. On July 18, 2022, Timber Creek responded to Staff's recommendation stating that it has no objection to Staff's recommendations and conditions. No other party has objected to Staff's recommendation. No party has

requested an evidentiary hearing, and no law requires one, so the Commission may grant Timber Creek's request based on the application and Staff's recommendation.[1]

Timber Creek is a Missouri general business corporation, active and in good standing with the Missouri Secretary of State, with its principal office and place of business located at P.O. Box 511, Platte City, MO 64079. Timber Creek provides sewer service to approximately 2,357 customers in Platte and Clay Counties, Missouri, pursuant to certificates of convenience and necessity previously granted by the Commission. Timber Creek is a "sewer corporation" and a "public utility" as those terms are defined in Section 386.020, RSMo., and is subject to the jurisdiction and supervision of the Commission as provided by law.

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 applies the five "Tartan Criteria" established in *In the Matter of Tartan Energy Company, et al*., 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN. The criteria are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

Based on the application and Staff's recommendations, the Commission concludes that the factors for granting a certificate of convenience and necessity to Timber Creek have been satisfied and that it is in the public's interest for Timber Creek

[1] See *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. W.D. 1989).
[2] Section 393.170.3, RSMo.

to provide sewer service to the area known as Johnson Ridge. Further, the Commission finds that Timber Creek possesses adequate technical, managerial, and financial capacity to operate the sewer system. The Commission will authorize the certificate of convenience and necessity for Timber Creek to provide sewer service subject to the conditions described in Staff's recommendation memorandum and within the service area defined in Attachments A and B of the memorandum.

Timber Creek's application also asks the Commission to waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1). Timber Creek filed an affidavit pursuant to Commission Rule 20 CSR 4240-4.017(1)(D) stating that it has had no communication with the office of the Commission within the preceding 150 days regarding the subject matter of the application. The Commission finds good cause exists to waive the notice requirement, and a waiver of 20 CSR 4240-4.017(1) will be granted.

THE COMMISSION ORDERS THAT:

1. Timber Creek is granted a certificate of convenience and necessity to provide sewer service to the expanded service area known as Johnson Ridge, described in the revised map and legal description proposed by Staff[3], subject to the conditions and requirements contained in Staff's Recommendation, including the filing of tariffs, as set out below:

   a. Timber Creek shall file 2nd Revised Sheets 2A and 3B, as 30-day filings, within ten days after the effective date of this order, with a legal description and a map depicting the new service area;

   b. Timber Creek shall develop and provide to CXD Staff and distribute to all customers, present and new to the expansion, a customer brochure which outlines all of the criteria in Commission Rule 20 CSR 4240-13.040(3) within thirty (30) days of the effective date of this order;

[3] *Staff Recommendation,* File No. SA-2022-0338 Attachments A and B (Filed on July 14, 2022).

c. Timber Creek shall provide training to its call center personnel regarding rates and rules pertaining to the new customers of the expansion area within thirty days of the addition of the first new customer

d. Timber Creek Shall provide to CXD Staff the first billing statements sent to customers of the new expansion area as new service is established according to Appendix D of the application;

e. Timber Creek Shall email Staff in the CXD and Water, Sewer & Steam Departments outlining completion of the above recommendations regarding the customer brochure, training and billing within the specified time periods

2. No part of this order shall be construed to preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to utility plant constructed within the new service area, or providing service in the new service area, in any later proceeding.

3. The Commission grants Timber Creek's request to waive the notice requirement of 20 CSR 4240-4.017(1).

4. This order shall become effective on August 26, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Keeling, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

The Staff of the Missouri Public Service Commission,	)	
Complainant,	)	
	)	**File No. WC-2022-0295**
v.	)	
	)	
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park.	)	
Respondent.	)	

ORDER GRANTING STAFF'S MOTION TO COMPEL AND DENYING RESPONDENT'S REQUEST FOR A PROTECTIVE ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

Whether an entity is a public utility requiring the Commission's regulation is within the primary jurisdiction of the Commission and is of utmost importance in determining whether an entity should be regulated by the Commission for the provision of safe and adequate service. Staff's response points out that what an entity says it does and what it actually does may be different. The only way Staff can ascertain that I-70 is providing the services as it professes is by physically examining the water and sewer systems.

§29. Discovery

Obtaining discovery by permission to enter upon land or other property, for inspection and other purposes is an acceptable method of obtaining discovery pursuant to Missouri Supreme Court Rule 56.01(a). Water systems and sewer systems occupy a large physical presence and an In-person examination of those systems is a reasonable method of ascertaining information about the physical structure of the water and sewer systems. The Commission does not find Staff's request to enter I-70's property to inspect the water and sewer systems unreasonable.

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 July, 2022.

The Staff of the Missouri Public Service Commission, Complainant,	)	
v.	)	**File No. WC-2022-0295**
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park. Respondent.	)	

ORDER GRANTING STAFF'S MOTION TO COMPEL AND DENYING RESPONDENT'S REQUEST FOR A PROTECTIVE ORDER

Issue Date: July 27, 2022 Effective Date: July 27, 2022

The Staff of the Commission (Staff) filed a motion to compel entry onto I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park's (I-70) business premises for the purpose of conducting an inspection of the water and sewer facilities and to take some photographs. I-70 objects to Staff's request and asks that the Commission issue a protective order.

Background

Staff filed a complaint with the Commission on April 22, 2022, alleging that I-70 is offering water and sewer services to the public, for gain, without certification or other authority from the Commission, in violation of Section 393.170, RSMo. The Commission issued an order consolidating the sewer case, File No. SC-2022-0296, into this case.

On June 3, 2022, Staff, as part of the discovery process, filed *Complainant's Request for Permission for Entry Upon Land for Inspection*. Staff sought entry onto I-70's

business premises to conduct an inspection. The request asks to inspect the following water system facilities on I-70's property:

1. I-70's City Wastewater Treatment Facility and lagoon, as more fully described in the Missouri State Operating Permit issued by the Department of Natural Resources to I-70 and included as Attachment A to the Complaint.
2. Water service connections that are visible.
3. Sewer service connections that are visible.
4. A representative number of water meters located in I-70 (approximately 20 percent) plus the master meter to I-70.
5. System appurtenances that are at or above grade, including access to any structures containing systems-related components.
6. Photographs of the above-listed locations.

On June 13, 2022, I-70 filed *Respondent's Objection to Complainant's Request for Permission for Entry upon Land for Inspection and Motion for Protective Order*. I-70's pleading objects to Staff's entry on land for inspection and requests a protective order to prevent Staff's entry onto I-70's business premises. I-70 states that Staff's request seeks irrelevant information, is unduly burdensome, is not proportional to the needs of this matter, and is made for the purpose of vexing and harassing I-70. I-70 also asserts that the request is duplicative of 32 data requests.

The Commission ordered Staff to respond to I-70's objections and motion for a protective order. Staff's June 28, 2022, response asserts that the information it seeks is relevant to establish what real estate, fixtures and personal property are owned, operated, controlled or managed in connection with or to facilitate the diversion, development,

storage, supply, distribution, sale, furnishing or carriage of water. Staff further avers that not all details are available through publicly available means, or can be determined from I-70's answer to the complaint or in responses to data requests.

Also on June 28, 2022, I-70 filed its *Motion for Extension, Motion for Abeyance, and Request for Discovery Conference*. I-70's motion stated that it could provide answers to outstanding data requests by July 11, 2022. The motion also requested that the Regulatory Judge hold a discovery conference.

The Commission held a discovery conference on June 30, 2022. Staff, I-70, and the Office of the Public Counsel appeared at the conference. I-70 again stated that it could provide answers or objections to data requests by July 11, 2022. Staff indicated that it would not be unduly prejudiced by that delay, so I-70 was ordered to provide answers or objections to 32 outstanding data requests no later than July 11, 2022. However, the discovery conference failed to resolve the dispute concerning Staff's entry onto I-70's property for inspection, and the Regulatory Law Judge authorized Staff to file a motion to compel, finding that Staff had fulfilled the requirements of Commission Rule 20 CSR 4240-2.090(8).

On July 8, 2022, Staff filed a motion asking the Commission to compel I-70 to permit entry onto land for inspection. Pursuant to Commission Rule 20 CSR 4240-2.080(13) other parties had ten days to respond to respond to the motion to compel. I-70 filed a response reiterating its objections.

Applicable Law and Decision

Commission Rule 20 CSR 4240-2.090(1) provides that discovery in matters before the Commission may be obtained by the same means and under the same conditions as

in civil actions in the circuit court. Thus the Commission will examine the Missouri rules of civil procedure.

Missouri Rule of Civil Procedure 56.01(a), **Discovery Methods**, provides:

> Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or **permission to enter upon land or other property, for inspection and other purposes**; physical and mental examinations; and requests for admission.

Missouri Rule of Civil Procedure 56.01(b), **Scope of Discovery**, provides in part:

> (1) Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action… provided the discovery is proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.
>
> Information within the scope of discovery need not be admissible in evidence to be discoverable if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
>
> The party seeking discovery shall bear the burden of establishing relevance.

In determining whether Staffs' Motion to Compel should be granted, the Commission will evaluate whether the information sought is relevant to the subject matter at issue in this case, is reasonably calculated to lead to the discovery of admissible evidence, and is proportional to the needs of the case and not overly burdensome. To do that, the Commission must consider the complaint that will be the subject of the upcoming evidentiary hearing.

Complaints before the Commission are governed by Section 386.390, RSMo. The Commission's statutory jurisdiction is to determine whether I-70 violated any provision of law subject to the Commission's authority, of any rule promulgated by the Commission, of any utility tariff, or of any order or decision of the Commission.

The subject matter of the pending action, pursuant to Missouri Court Rule 56.01(b)(1), is whether I-70 is operating a water and sewer corporation that would be subject to the Commission regulation. Operation of a water and sewer system are necessary elements of the alleged violation. Staff states that the "information sought is relevant to establish what "real estate, fixtures and personal property" are "owned, operated, controlled or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal domestic or other beneficial use."[1] The Commission finds that the information Staff seeks is relevant to the subject matter of the pending action, and because the information involves the physical structure of the water and sewer systems it is also likely to lead to the discovery of admissible evidence.

I-70 argues that Staff's use of taxpayer resources for an in-person inspection is unprecedented. I-70 states that Staff's request is unduly burdensome, is not proportional to the needs of this matter, and is made for the purpose of vexing and harassing I-70. Additionally, the president of I-70 resides out of state and desires to be present for any in-person inspection and would have to travel to Missouri.

Staff states that inspections of premises are consistent with a typical Staff investigation. Obtaining discovery by permission to enter upon land or other property, for

[1] *Complainant's Response to Respondent's Objection to Complainant's Request for Permission for Entry upon Land for Inspection and Motion for Protective Order*, p. 4, filed June 28, 2022.

inspection and other purposes is an acceptable method of obtaining discovery pursuant to Missouri Supreme Court Rule 56.01(a). Water systems and sewer systems occupy a large physical presence and an In-person examination of those systems is a reasonable method of ascertaining information about the physical structure of the water and sewer systems. The Commission does not find Staff's request to enter I-70's property to inspect the water and sewer systems unreasonable.

The Commission is not persuaded that Staff's request is made for the purpose of vexing and harassing I-70. The Commission will therefore examine whether Staff's request is proportional to the needs of the case as set forth in Missouri Court Rule 56.01(b)(1).

Staff seeks information related to the physical structure and layout of the water and sewer systems. At the discovery conference, Staff engineer, Andy Harris, stated "The primary goal is to understand how the systems are set up and how they operate."[2] Additionally, Staff has not expressed a desire to enter any residence or disrupt day to day operations. I-70 asserts that an in-person inspection is overly burdensome and not proportional to the needs of this case. In support of this proposition I-70 asserts that the president of I-70 resides out of state and desires to be present for any in-person examination, which would be a burden. However, that is a preference of I-70's president and not a requirement for an in-person inspection. Someone manages day-to-day operations and manages the property in the president's absence, so that person should be available to show Staff the water and sewer system.

[2] Transcript, Vol. 1, p. 26-27, filed July 20, 2022.

Whether an entity is a public utility requiring the Commission's regulation is within the primary jurisdiction of the Commission and is of utmost importance in determining whether an entity should be regulated by the Commission for the provision of safe and adequate service. Staff's response points out that what an entity says it does and what it actually does may be different.[3] The only way Staff can ascertain that I-70 is providing the services as it professes is by physically examining the water and sewer systems. The Commission does not find that Staff's request is overly burdensome or disproportional to the needs of this case.

Staff has demonstrated that the request to enter onto I-70's property for inspection is relevant to the subject matter of this action and that the information sought is reasonably likely to lead to discoverable information. The Commission will grant Staff's motion to compel entry onto land for inspection. The Commission will deny I-70's motion for a protective order.

THE COMMISSION ORDERS THAT:

1. Staff's motion to compel is granted. I-70 shall provide Staff access to the property for the purpose of inspecting the water and sewer system and taking photographs of the systems.

2. I-70's motion for a protective order is denied.

3. This order is effective when issued.

[3] "In determining whether a corporation is or is not a public utility, the important thing is, not what its charter says it may do, but what it actually does."State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n. of Mo., 205 S.W. 36 (Mo. 1918), citing Terminal Taxicab Co. v. Kutz, 241 U.S. 252 (1916).

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company for Authority to Sell Certain Water Assets to the City of Nixa, Missouri, and in Connection Therewith, Certain Other Related Transactions	))))))	**File No. WM-2022-0246**

ORDER GRANTING APPLICATION TO SELL ASSETS

WATER

§4. Transfer, lease and sale

Section 393.190.1, RSMo 2016, requires a water corporation to obtain Commission approval before selling its assets. The Commission may not withhold approval of the sale unless the sale would be detrimental to the public interest (citing *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980)).

§4. Transfer, lease and sale

The Commission granted authority for Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company to sell its water utility assets in Christian County, Missouri to the City of Nixa, finding the transaction was not detrimental to the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of August, 2022.

In the Matter of the Application of Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company for Authority to Sell Certain Water Assets to the City of Nixa, Missouri, and in Connection Therewith, Certain Other Related Transactions	))))))	**File No. WM-2022-0246**

ORDER GRANTING APPLICATION TO SELL ASSETS

Issue Date: August 17, 2022 Effective Date: September 16, 2022

On March 14, 2022, Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company (RDE) filed an application for an order authorizing the sale of its water system assets to the City of Nixa (Nixa) pursuant to an Asset Purchase Agreement filed with the application. RDE holds a Certificate of Convenience and Necessity (CCN) to provide water service in Christian County, Missouri, issued by the Commission in File No. WA-77-83. With approval of the sale, RDE is requesting cancellation of its CCN and its tariff, as it would no longer be providing water service in the state. RDE is also requesting waiver of the 60-day notice requirement under Commission Rule 20 CSR 4240-4.017.

On March 16, 2022, the Commission issued an order and notice giving interested parties until April 15, 2022, to intervene. No parties requested intervention.

On April 25, 2022, the Staff of the Commission (Staff) filed its Recommendation. Staff recommends that the Commission approve the sale, subject to five conditions. No responses or objections to Staff's recommendation were filed.

On May 2, 2022, the Office of Public Counsel (OPC) requested the Commission hold a local public hearing. The Commission granted the request and a local public hearing was held in Nixa on July 26, 2022. No one testified in opposition to the sale. On August 3, 2022, OPC filed *Public Counsel's Response to Application* (Response), in which it did not oppose the sale from RDE to Nixa.

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

RDE is a "public utility" and a "water corporation," as those terms are defined by Section 386.020, RSMo (2016), and is, therefore, subject to regulation by the Commission. RDE provides water service to approximately 1,300 customers in a service area outside of, but adjacent to, Nixa's service area. Nixa currently owns, operates, and maintains a municipal water system serving approximately 9,490 customers; however, Nixa is not generally subject to the jurisdiction of the Commission.

In their recommendation, Staff concluded that Nixa will be capable of providing service to the existing RDE customers and that the sale and transfer of assets will be beneficial to the customers. Although rates will increase, the existing RDE customers will receive additional benefits as Nixa customers. First, Nixa will provide an increase in staffing and full-time operations personnel, compared to RDE's current staffing. Second, Nixa has more technical capacity to perform the normal business tasks of the water systems. Third, Nixa has the financial ability to perform routine maintenance and make necessary upgrades to the water system, including adding chlorination to a well that has

[1] State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

had positive bacteria tests. It appears Nixa is large enough and financially stable enough to handle the addition of the customers from RDE.

Staff's position is that the transaction will not be detrimental to the public interest.

Section 393.190.1, RSMo (2016), requires a water corporation to obtain Commission approval before selling its assets. The Commission may not withhold approval of the sale unless the sale would be detrimental to the public interest.[2]

The Commission has reviewed RDE's application, Staff's recommendation, and OPC's Response. Based upon those pleadings, the Commission finds that the proposed transaction is not detrimental to the public interest and will be approved.

RDE also requested a waiver of Commission Rule 20 CSR 4240-4.017(1) requiring notice with the Commission of intent to file an application 60 days before filing the application. RDE requests such a waiver under Commission Rule 20 CSR 4240-4.017(1)(D). RDE stated that it did not have a fully executed agreement sixty days prior to the filing. The Commission finds good cause for the waiver of the 60-day notice requirement, that circumstances prevented filing, and delaying the filing for 60 days would cause harm.

THE COMMISSION ORDERS THAT:

1. RDE is granted a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1).

[2] See *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

2. The Commission grants the application of RDE filed on March 14, 2022, for authority to sell its water utility assets to the City of Nixa, as described in the Asset Purchase Agreement filed with the application, subject to the following conditions:

a. RDE shall notify the Commission of closing on the water assets with Nixa within five (5) days after such closing;

b. RDE shall be authorized to cease providing service immediately after closing on the assets;

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

d. If RDE determines that a transfer of the assets will not occur, RDE shall notify the Commission of such;

e. After receiving notice of closing, the Commission will cancel the respective CCN and tariff authorizing RDE to provide water service.

3. This order shall be effective on September 16, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Seyer, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and around the City of Purcell, Missouri.	)))))))	**File No. WA-2022-0293**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21.1. Public interest

MAWC's acquisition of these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission, and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served. The water and sewer systems require repairs and upgrades to continue to provide safe and reliable water and sewer service. The Commission finds that granting a Certificate of Convenience and Necessity to Missouri-American Water Company promotes the public interest.

§21.2. Technical qualifications of applicant
§21.3. Financial ability of applicant
§21.4. Economic feasibility of proposed service

Missouri-American Water Company has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable water service to 474,000 customers and sewer service to approximately 16,500 customers. Missouri-American Water Company has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Missouri-American Water Company has the financial ability to provide the service, and no external financing approval is being requested.

WATER

§2. Certificate of convenience and necessity

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." *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

§2. Certificate of convenience and necessity

Missouri-American Water Company filed applications requesting the Commission grant Missouri-American Water Company Certificates of Convenience and Necessity to acquire, own, install, construct, operate, control, manage, and maintain water and sewer systems in Jasper County, Missouri.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 31st day of August, 2022.

In the Matter of the Application of Missouri-American Water Company for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System and Sewer System in and around the City of Purcell, Missouri.	))))))))	**File No. WA-2022-0293**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: August 31, 2022 Effective Date: September 9, 2022

On April 21, 2022, Missouri-American Water Company (MAWC) filed applications requesting the Commission grant MAWC Certificates of Convenience and Necessity (CCN) to acquire, own, install, construct, operate, control, manage, and maintain water and sewer systems in Jasper County, Missouri. The requested CCN would allow MAWC to acquire the water and sewer assets[1] of the City of Purcell (Purcell). Purcell is a Fourth-Class City with a population of approximately 425, located in Jasper County, Missouri. Purcell serves approximately 160 water accounts and 150 sewer accounts. MAWC's application also requests a variance of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1), and a request for expedited treatment of its applications.

The Commission issued notice and set a deadline for intervention requests, but received none. The Commission also directed its Staff (Staff) to file a recommendation

[1] The Commission consolidated the sewer asset acquisition case, SA-2022-0294 into this case on June 29, 2022.

about MAWC's application. On July 28, 2022, Staff recommended the Commission approve MAWC's request for a CCN, with conditions described in the memorandum accompanying Staff's recommendation.

On August 8, 2022, MAWC responded to Staff's recommendation stating that it had no objection to any of Staff's proposed conditions. On August 25, 2022, the Office of the Public Counsel (OPC) filed a response to Staff's recommendation and suggested additional notice language to inform Purcell customers that customers inside and outside the city will be consolidated and that MAWC will be providing service subject to the rates and rules in its existing water and sewer tariffs. MAWC replied to OPC's recommendation stating that it had no objections to OPC's proposed language for a post-closing letter.

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

MAWC currently provides water service to approximately 474,000 customers and sewer service to approximately 16,500 customers in Missouri. MAWC is current on its water and sewer PSC assessment payments, is current on its annual reports, and is in good standing with the Secretary of State's office.

The requested water CCN would allow MAWC to provide water and sewer service by acquiring Purcell's existing water and sewer systems. MAWC was contacted in February 2021 for assistance with Purcell's water and sewer systems. Purcell had no certified water or sewer system operator at that time, and was unable to operate its systems in a safe and compliant manner. Certified operators are required by the permit and are necessary for ensuring these systems are operable, providing safe and reliable

service, and compliant with the terms of the permit. At the time MAWC began operating the systems for Purcell, the drinking water disinfection system was not functioning, and the sewer system was discharging wastewater from the plant that was not safe and compliant. Purcell entered into an operation and maintenance agreement with MAWC on March 16, 2021. Purcell held an election on August 3, 2021 with over 90 percent of the votes in favor of selling its water and sewer systems to MAWC. There were 63 total votes cast of which 59 voted yes and four voted no.

The Purcell water system is comprised of two deep wells, a 50,000 gallon elevated storage tank, seven miles of water mains, and 28 fire hydrants. One well is shared with the City of Alba, and the two cities split maintenance and capital costs. The Purcell sewer system is comprised of approximately six miles of both gravity and force sewer mains, three lift stations, and grinder pumps where gravity flow is unavailable, with treatment by recirculating sand filtration plant and UV disinfection. MAWC has already performed some maintenance on the system and has additional upgrades to complete. Staff has proposed several improvements to the water and sewer systems. Based upon Staff's analysis, the net book value of the Purcell assets, as of June 30, 2022, is approximately $342,755 for the sewer system, and $277,130 for the water system, for a total net book value of $619,885.

Current customers pay different water rates based upon whether they reside inside the city. Those residing inside the city pay a $15.00 customer charge and a $3.50 per 1000 gallons commodity rate for water service. Those residing outside the city pay a $22.00 customer charge and a $6.00 per 1000 gallons commodity rate for water service. Sewer customers pay $36.00 for the first 0-999 gallons and $5.00 per each additional

1000 gallons. MAWC proposes combining all customers and consolidating rates because there are no additional costs to providing service inside or outside the city. MAWC also proposes to provide water service pursuant to existing rates for its Joplin service area, and sewer service pursuant to existing rates for its Stonebridge and Branson Canyon service area. Water customers would pay a $9.00 customer charge and a $6.2469 per 1000 gallons commodity rate for water service and a flat rate of $61.64 for sewer service. Consolidating rates under MAWC's current tariff would prevent the Purcell, MAWC and its customers from having to undergo the consolidation process on multiple occasions. Both MAWC and the current mayor of Purcell agreed that MAWC's existing rates would be adopted in this manner.

Decision

More than ten days have passed since Staff filed its recommendation and no party has objected to MAWC's application or Staff's recommendation.[2] No party has requested an evidentiary hearing.[3] Therefore, the Commission will rule upon MAWC's application.

The Commission may grant a water or sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."[4] 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:

[2] Commission rule 20 CSR 4240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.
[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 393.170.3, RSMo.

(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.[5] These criteria are also known as the Tartan Factors.[6]

There is a current and future need for water and sewer service. The existing customer base for the water and sewer systems being acquired have both a desire and need for service, as demonstrated by Purcell's vote to sell the system to MAWC. In addition, there is a need for the necessary steps to be taken to update the water and sewer systems to ensure provision of safe and adequate service. MAWC has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable water service to 474,000 customers and sewer service to approximately 16,500 customers. MAWC has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. MAWC has the financial ability to provide the service, and no external financing approval is being requested. MAWC's acquisition of these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission,[7] and it is within the discretion of the Commission to determine when the evidence indicates the public interest

[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).
[6] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).
[7] *State ex rel. Public Water Supply District No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

would be served.[8] The water and sewer systems require repairs and upgrades to continue to provide safe and reliable water and sewer service. The Commission finds that granting a CCN to MAWC promotes the public interest.

Based on the application and Staff's recommendation, the Commission finds that MAWC has complied with the requirements of Section 393.320 RSMo., and concludes that the factors for granting a CCN to MAWC have been satisfied and that it is in the public interest for MAWC to provide water and wastewater treatment services to Purcell. Therefore, the Commission will grant MAWC's requested CCN, and also order the conditions described in Staff's recommendation and memorandum. So that MAWC may expedite its acquisition and repair of these systems, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. MAWC is granted a waiver of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1).

2. MAWC's request for expedited treatment is granted.

3. MAWC is authorized to acquire, and is granted a CCN to own, install, construct, operate, control, manage, and maintain the water and sewer assets of Purcell.

4. MAWC shall adopt the water rates and rules for its Joplin service area contained in its water tariff, P.S.C. MO No. 13, for the Purcell service area.

5. MAWC shall adopt the sewer rates and rules for its Stonebridge and Branson Canyon service area contained in its sewer tariff, P.S.C. MO No. 26, for the Purcell service area.

[8] *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

6. MAWC shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges to be included in its EFIS tariffs P.S.C. MO No. 13 and 26, applicable to water and sewer service, respectively.

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

8. If closing on the water and sewer assets does not take place within 30 days following the effective date of the Commission's order approving such, MAWC shall submit a status report within five days after this 30-day period regarding the status of the closing, and additional status reports within five days after each additional 30-day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur.

9. If MAWC determines that a transfer of the assets will not occur, MAWC shall notify the Commission of such, no later than the date of the next status report, as addressed above, after such determination is made, and MAWC shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Purcell service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in that service area in both the water and sewer tariffs.

10. MAWC shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts.

11. MAWC shall adopt the depreciation rates ordered in Case No. WR-2020-0344.

12. MAWC shall provide additional notice to Purcell customers as a part of MAWC's post-closing letter to customers as contained in *Public Counsel's Response to Staff Recommendation*, filed August 25, 2022.

13. MAWC shall provide to the Customer Experience Department (CXD) Staff an example of its actual communication with the water and sewer customers regarding its acquisition and operations of the water and sewer system assets, and how customers may reach MAWC, within 10 days after closing on the assets.

14. MAWC shall provide to the CXD Staff a sample of ten billing statements from the first month's billing within 30 days after the closing on assets.

15. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Purcell water and sewer system customers.

16. MAWC shall include the Purcell water and sewer system customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets.

17. MAWC shall file notice in this case outlining completion of the above-recommended training, customer communications, and notifications within 10 days after such communications and notifications.

18. This order shall become effective on September 9, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct a Renewable Generation Facility	)))))))	**File No. EA-2022-0244**

ORDER DENYING INTERVENTION

EVIDENCE, PRACTICE AND PROCEDURE

§22. Parties

Commission Rule 20 CSR 4240-2.075(10) allows the Commission to grant a motion to intervene after the intervention deadline date "upon a showing of good cause."

§22. Parties

Where an application to intervene was filed after the intervention deadline date, the Commission denied intervention for failure of the application to state a good cause basis for granting the application.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of September, 2022.

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct a Renewable Generation Facility	))))))	**File No. EA-2022-0244**

ORDER DENYING INTERVENTION

Issue Date: September 8, 2022 Effective Date: September 8, 2022

On July 7, 2022, Union Electric Company d/b/a Ameren Missouri filed an application with the Commission seeking an order granting a Certificate of Convenience and Necessity (CCN) pursuant to Sections 393.170 and 393.190.1, RSMo. The CCN would authorize Ameren Missouri to construct, install, own, operate, maintain, and otherwise control and manage a 200 megawatt solar generation facility, located in Audrain and Ralls Counties, Missouri (referred to as the "Huck Finn Solar Project") pursuant to a Build Transfer Agreement with EDF Renewables Development, Inc.

The Commission gave public notice of the application and set an August 4, 2022, intervention deadline.

On August 19, 2022, Missouri Industrial Energy Consumers (MIEC) filed an application to intervene. In its application, MIEC stated that it is “a non-profit corporation that represents the interests of industrial customers in matters involving utility issues . . . includ[ing] the interests of large industrial consumers of . . . Ameren Missouri.” MIEC also

stated that it has interests that are different from those of the general public and could be adversely affected by actions taken as a result of the decision in this case.

Commission Rule 20 CSR 4240-2.075(10) allows the Commission to grant a motion to intervene after the intervention date "upon a showing of good cause." MIEC's intervention application does not request that it be granted leave to file its application out of time, nor does it state a good cause basis for granting its untimely application. The Commission finds that MIEC's application for intervention was not filed by the deadline to intervene set by the Commission and no good cause has been shown by MIEC to grant its application out of time. Consequently, the Commission will deny MIEC's untimely application to intervene.

THE COMMISSION ORDERS THAT:

1. MIEC's application to intervene is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Seyer, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of a Subscription-Based Renewable Energy Program	))))	**File No. EA-2022-0245**

ORDER DENYING INTERVENTION

EVIDENCE, PRACTICE AND PROCEDURE

§22. Parties

Commission Rule 20 CSR 4240-2.075(10) allows the Commission to grant a motion to intervene after the intervention date upon a showing of good cause. MIEC's intervention application does not request that it be granted leave to file its application out of time, nor does it state a good cause basis for granting its untimely application.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of September, 2022.

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of a Subscription-Based Renewable Energy Program	))))	**File No. EA-2022-0245**

ORDER DENYING INTERVENTION

Issue Date: September 8, 2022 Effective Date: September 8, 2022

On July 14, 2022, Union Electric Company d/b/a Ameren Missouri filed an application with the Commission seeking an order granting a Certificate of Convenience and Necessity (CCN) pursuant to Sections 393.140, 393.170.1 and 393.190.1, RSMo. The Commission directed notice and set a deadline of August 15, 2022, for applications to intervene.

On August 19, 2022, Missouri Industrial Energy Consumers (MIEC) filed an application to intervene. In its application, MIEC stated that it is "a non-profit corporation that represents the interests of industrial customers in matters involving utility issues . . . includ[ing] the interests of large industrial consumers of . . . Ameren Missouri." MIEC also stated that it has interests that are different from those of the general public and could be adversely affected by actions taken as a result of the decision in this case.

Commission Rule 20 CSR 4240-2.075(10) allows the Commission to grant a motion to intervene after the intervention date "upon a showing of good cause." MIEC's intervention application does not request that it be granted leave to file its application out of time, nor does it state a good cause basis for granting its untimely application. The

Commission finds that MIEC's application for intervention was not filed by the deadline to intervene set by the Commission and no good cause has been shown by MIEC to grant its application out of time. Consequently, the Commission will deny MIEC's untimely application to intervene.

THE COMMISSION ORDERS THAT:

1. MIEC's application to intervene is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for a Certificate of Convenience and Necessity and to Acquire Certain Sewer Assets	)))))	**File No. SA-2022-0299**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21.1. Public interest

Confluence Rivers' acquiring these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission, and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served. The sewer system requires repairs and upgrades to continue to provide safe and reliable sewer service to existing and future customers. The Commission finds that granting a Certificate of Convenience and Necessity to Confluence Rivers promotes the public interest.

§21.2. Technical qualifications of applicant
§21.3. Financial ability of applicant
§21.4. Economic feasibility of proposed service

Confluence Rivers has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable sewer service to approximately 4,548 customers in its Missouri service areas. Confluence Rivers has demonstrated that it has adequate resources to operate utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Confluence Rivers has the financial ability to provide the service, and no financing approval is being requested.

§31. Rate proposals

Confluence Rivers proposes $20 sewer rates as an interim rate for Deer Run, and the Commission finds the proposed $20.00 rate to be just and reasonable.

SEWER

§2. Certificate of convenience and necessity

Confluence Rivers Utility Operating Company, Inc. filed an application requesting the Commission grant it a Certificate of Convenience and Necessity to acquire, own, install,

construct, operate, control, manage, and maintain a sewer system in Madison County, Missouri.

§2. Certificate of convenience and necessity

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." *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 14th day of September, 2022.

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for a Certificate of Convenience and Necessity and to Acquire Certain Sewer Assets	)))))	**File No. SA-2022-0299**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: September 14, 2022 Effective Date: October 14, 2022

On April 28, 2022, Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed an application requesting the Commission grant it a Certificate of Convenience and Necessity (CCN) to acquire, own, install, construct, operate, control, manage, and maintain a sewer system in Madison County, Missouri. The requested CCN would allow Confluence Rivers to acquire the assets of the Deer Run Estates Property Owner's Association (Deer Run), an unregulated sewer system. The application also requests a variance of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1).

The Commission issued notice and set a deadline for applications to intervene, but received none. The Commission also directed the Staff of the Commission (Staff) to file a recommendation about Confluence Rivers' application. On August 29, 2022, Staff recommended the Commission approve Confluence Rivers' request for a CCN, with conditions. Confluence Rivers has no objection to any of Staff's proposed conditions.

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

Confluence Rivers is a subsidiary of Central States Water Resources, LLC, which also owns and operates other water and sewer companies in Missouri. Confluence Rivers currently provides water service to approximately 4,389 customers and sewer service to approximately 4,548 customers in Missouri. Confluence Rivers is current on its water and sewer PSC assessment payments, is current on its annual reports, and is in good standing with the Secretary of State's office.

Deer Run is a nonprofit corporation with its principal office located in Fredericktown, Missouri. It provides sewer services to approximately 50 customers. Deer Run received the sewer system from the developer as contributed plant. The Commission does not currently regulate Deer Run.

The collection system consists of mostly PVC pipe that gravity flows to a central ten inch ductile iron pipe that runs underneath Deer Lake and Deer Lake's dam, and then gravity flows into the lagoon. According to the operator, there have been issues with the ten inch pipe getting blocked at the lake's dam. The treatment system is a two-cell aerated lagoon with chlorination and dechlorination. Sludge is retained in the lagoon. The effluent discharges into Rock Creek. Confluence has proposed several improvements for the sewer system that will phase in over two phases. The phased approach and proposed improvements are consistent with the results of Staff's review and inspection.

Deer Run charges $1.70 per 1000 gallons of water usage for the majority of sewer customers.[1] A customer using 5,000 gallons of water per month is currently paying $8.50 for sewer service. Confluence's proposes a $20 flat rate, which is considerably lower than the actual cost of service, but is a step in the right direction and reduces rate shock. The actual cost of service will be reviewed as part of Confluence's next rate case.

Decision

More than ten days have passed since Staff filed its recommendation and no party has objected to Confluence Rivers' application or Staff's recommendation.[2] No party has requested an evidentiary hearing.[3] Therefore, the Commission will rule upon Confluence Rivers' application.

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

[1] For sewer customers that own their own water well, Deer Run charges a flat rate of $10 per month.
[2] Commission rule 20 CSR 4240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.
[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 393.170.3, RSMo.

promote the public interest.[5] These criteria are also known as the Tartan Factors.[6]

There is a current and future need for sewer service. The existing customer base has both a desire and need for service. In addition, there is a need for improvements to the sewer system to ensure provision of safe and adequate service. Confluence Rivers has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable sewer service to approximately 4,548 customers in its Missouri service areas. Confluence Rivers has demonstrated that it has adequate resources to operate utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Confluence Rivers has the financial ability to provide the service, and no financing approval is being requested. Confluence Rivers proposes $20 sewer rates as an interim rate for Deer Run, and the Commission finds the proposed $20.00 rate to be just and reasonable.

Confluence Rivers' acquiring these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission,[7] and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.[8] The sewer system requires repairs and upgrades to continue to provide safe and reliable sewer service to existing and future customers. The Commission finds that granting a CCN to Confluence Rivers promotes the public interest.

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[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).

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

[7] *State ex rel. Public Water Supply District No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

[8] *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

Based on the application and Staff's recommendation, the Commission concludes that the factors for granting a CCN to Confluence Rivers have been satisfied and that it is in the public interest for Confluence Rivers to provide wastewater treatment services to Deer Run. Therefore, the Commission will grant Confluence Rivers' requested CCN, subject to the conditions described in Staff's recommendation.

THE COMMISSION ORDERS THAT:

1. Confluence Rivers is granted a waiver of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1).

2. Confluence Rivers is granted a CCN to install, own, acquire, construct, operate, control, manage, and maintain the Deer Run sewer system.

3. Confluence Rivers shall adopt its proposed sewer rate of a $20.00 flat rate for sewer service for Deer Run.

4. Confluence shall revise P.S.C. MO No. 13 for the addition of Deer Run's sewer assets, to become effective before closing on the assets. Confluence shall also file tariff sheets for the service area map, service area written description for Deer Run's sewer assets, and table of contents.

5. Confluence shall work with the Department of Natural Resources to complete the renewal and transfer of the Operating Permit for the treatment facility.

6. Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing;

7. If closing on the water and sewer assets does not take place within 30 days following the effective date of the Commission's order approving such, Confluence Rivers shall submit a status report within five days after this 30 day period regarding the status

of the closing, and additional status reports within five days after each additional 30 day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur.

8. If Confluence Rivers determines that a transfer of the assets will not occur, Confluence Rivers shall notify the Commission of such, no later than the date of the next status report, as addressed above, after such determination is made, and require Confluence to submit tariff sheets as appropriate that would cancel the service area map and description applicable to Deer Run in its sewer tariff, and rate and charge sheet applicable to customers in the Deer Run service area in the sewer tariff.

9. Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts.

10. Confluence shall distribute to the customers in the acquired area an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its sewer service, consistent with the requirements of Commission Rule 20 CSR 4240-13, within 30 days of closing on the assets.

11. Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the sewer customers in the acquired area.

12. Confluence Rivers shall provide to the Customer Experience Department (CXD) Staff an example of its actual communication with the sewer customers of Deer Run regarding its acquisition and operations of the water and sewer system assets, and how customers may reach Confluence, within ten days after closing on the assets.

13. Confluence Rivers shall provide to the CXD Staff a sample of five billing statements from the first month's billing for each of the acquired companies within ten days after the initial bill.

14. Confluence Rivers shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing for each acquired company within ten days after such communications and notifications.

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

16. This order shall become effective on October 14, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and Kolkmeyer CC., concur.
Rupp, C., absent.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

The Staff of the Missouri Public Service Commission, Complainant,	)	
v.	)	**File No. WC-2022-0295**
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park. Respondent.	)	

ORDER DIRECTING THE COMMISSION'S GENERAL COUNSEL TO SEEK ENFORCEMENT OF THE COMMISSION'S ORDER IN CIRCUIT COURT

EVIDENCE, PRACTICE AND PROCEDURE

§2. Jurisdiction and powers

Counsel for I-70 Mobile City Park asserted that no Commission order granting entry onto land shall be enforceable except upon order of the Circuit Court, citing Section 536.073.2, RSMo. The Commission recognizes that its order to allow Staff to enter property may only be enforced by action of the circuit court.

§2. Jurisdiction and powers

§9. Particular kinds of evidence generally

Section 393.140(7), RSMo., gives the Commission and its Staff the power to inspect the property, building, plants, factories, powerhouses, ducts, conduits, and offices of any water or sewer corporation. This authority is appropriate if its actions are consistent with the Commission's mission to ensure that Missourians receive safe and reliable utility services at just and reasonable rates. Accordingly, the Commission may authorize its Staff to conduct an inspection of I-70 Mobile City Park's premises.

WATER

§8. Jurisdiction and powers of the State Commission

I-70 Mobile City Park has refused to comply with the Commission's order directing it to allow entry onto its property to inspect the water and sewer systems. As provided by statute, that order may only be enforced by action of the circuit court. Therefore, the Commission will direct the general counsel of the Commission to file an action in the appropriate circuit court of this state to seek enforcement of the Commission's Order Granting Staff's Motion to Compel and Denying Respondent's Request for a Protective Order.

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 September, 2022.

The Staff of the Missouri Public Service Commission, Complainant,	)	
v.	)	**File No. WC-2022-0295**
I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park. Respondent.	)	

ORDER DIRECTING THE COMMISSION'S GENERAL COUNSEL TO SEEK ENFORCEMENT OF THE COMMISSION'S ORDER IN CIRCUIT COURT

Issue Date: September 14, 2022 Effective Date: September 14, 2022

On July 27, 2022, the Commission granted the Staff of the Commission's (Staff) motion to compel I-70 Mobile City, Inc. d/b/a I-70 Mobile City Park to allow Staff onto its property to perform an inspection of the water and sewer systems. On September 6, 2022 Staff filed its *Motion for an Order Directing General Counsel to Seek Enforcement of the Commission's Order*, and requested an informal conference with the Presiding Officer pursuant to Commission Rule 20 CSR 4240-2.090(8)(B).

At the conference, counsel for I-70 Mobile City Park asserted that no Commission order granting entry onto land shall be enforceable except upon order of the Circuit Court, citing section 536.073.2 RSMo., which states in relevant part:

> In addition to the powers granted in subsection 1 of this section, any agency authorized to hear a contested case may make rules to provide that the parties may obtain all or any designated part of the same discovery

> that any Missouri supreme court rule provides for civil actions in circuit court. The agency may enforce discovery by the same methods, terms and conditions as provided by supreme court rule in civil actions in the circuit court. Except as otherwise provided by law, no agency discovery order which:
>
> (2) Permits entrance upon land or inspection of property without permission of the owner; or
>
> (3) Purports to hold any person in contempt; shall be enforceable except upon order of the circuit court of the county in which the hearing will be held or the circuit court of Cole County at the option of the person seeking enforcement, after notice and hearing.

The Commission recognizes that its order to allow Staff to enter property may only be enforced by action of the circuit court.

The Commission has the authority to determine if an entity is subject to the Commission's jurisdiction,[1] and Section 393.140 sets out the Commission's general authority to regulate water systems.

Section 393.140(7), RSMo., gives the Commission and its Staff the power to inspect the property, building, plants, factories, powerhouses, ducts, conduits, and offices of any water or sewer corporation. This authority is appropriate if its actions are consistent with the Commission's mission to ensure that Missourians receive safe and reliable utility services at just and reasonable rates. Accordingly, the Commission may authorize its Staff to conduct an inspection of I-70 Mobile City Park's premises.

Commission Rule 20 CSR 4240-2.090(1), states that discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court.

[1] Section 386.250 RSMo.

Sanctions for failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.

Missouri Rule of Civil Procedure, 56.01(a), states that parties may obtain discovery by requesting permission to enter upon land or other property, for inspection and other purposes.

On September 13, 2022, I-70 Mobile City Park filed its *Suggestions in Opposition to Staff's Motion for an Order Directing General Counsel to Seek Enforcement of the Commission's Order*, reiterating its arguments opposing Staff's request to compel discovery.

I-70 Mobile City Park has refused to comply with the Commission's order directing it to allow entry onto its property to inspect the water and sewer systems. As provided by statute, that order may only be enforced by action of the circuit court. Therefore, the Commission will direct the general counsel of the Commission to file an action in the appropriate circuit court of this state to seek enforcement of the Commission's *Order Granting Staff's Motion to Compel and Denying Respondent's Request for a Protective Order*.[2]

THE COMMISSION ORDERS THAT:

1. The Commission authorizes and directs its general counsel to file an action in the circuit court of its choosing seeking enforcement of the Commission's *Order*

[2] Section 386.360 RSMo., authorizes the Commission to direct the general counsel to the commission to commence an action or proceeding in any circuit court of the state of Missouri in the name of the commission by mandamus for failing to comply with a Commission order.
Section 386.600 RSMo., authorizes the general counsel to seek enforcement in any circuit court of the state of Missouri to enforce the powers of the Commission.

Granting Staff's Motion to Compel and Denying Respondent's Request for a Protective Order.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and Kolkmeyer CC., concur.
Rupp, C., absent.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Carl Richard Mills' Request to Transfer Water System at Carriage Oaks Estate	)))	**File No. WM-2022-0144**

ORDER APPROVING TRANSFER OF UTILITY ASSETS

WATER

§4. Transfer, lease and sale

Carl R. Mills filed an application for an order authorizing the transfer and assignment of his water system assets to Carriage Oaks Estates Water and Sewer Not-For-Profit (Carriage Oaks).

§4. Transfer, lease and sale

The Commission finds that the proposed transfer to Carriage Oaks is not detrimental to the public interest. The Commission will approve the transfer of the water assets for the Mills system to Carriage Oaks.

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 September, 2022.

In the Matter of Carl Richard Mills' Request to Transfer Water System at Carriage Oaks Estate	)))	**File No. WM-2022-0144**

ORDER APPROVING TRANSFER OF UTILITY ASSETS

Issue Date: September 14, 2022 Effective Date: September 24, 2022

On November 30, 2021, Carl R. Mills (Mills) filed an application for an order authorizing the transfer and assignment of his water system assets to Carriage Oaks Estates Water and Sewer Not-For-Profit (Carriage Oaks). Mills is a "water corporation" and a "public utility," as those terms are defined in Section 386.020 RSMo. The Commission granted a certificate of convenience and necessity to Mills in File No. WA-2018-0370, which authorized the company to provide water service to customers in the Carriage Oaks Estates subdivision in Stone County, Missouri. Mills is also party to a pending rate case, File No. WR-2021-0177, and a complaint case, File No. WC-2021-0223, both of which concern this water system. Section 393.190, RSMo requires a water corporation obtain the Commission's authorization prior to the sale or transfer of its franchise, works, or system. Mills also seeks a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017.

Mills entered into an agreement to transfer its water assets to Carriage Oaks, a Missouri non-profit corporation, to manage the water assets for the benefit of the Carriage Oaks Estates homeowners. Carriage Oaks is not subject to the jurisdiction of the Commission.

The Commission issued an order directing notice, setting an intervention deadline, and directing the Staff of the Commission (Staff) to file a recommendation. No applications to intervene were received. On August 25, 2022, Staff filed its recommendation. Staff filed an amended recommendation on September 6, 2022. Staff recommends the Commission approve the transfer of the water utility assets with conditions.

Carl Mills developed Carriage Oaks Estates Subdivision and owns the Mills water system, providing water service to seven customers. The water system consists of a single well with current production capacity of 55 gallons per minute, a master meter, a ground storage tank, two high service booster pumps, and a water main consisting of 4-inch PVC pipe for all of the 32 lots in the developed area.[1] There is a chlorination system that is used to disinfect the storage tank, but the water is not routinely chlorinated. The water system is in good condition, and Carriage Oaks has no plans for future capital investments in the water system at this time.

On August 31, 2022, Missouri Department of Natural Resources confirmed that it reviewed Carriage Oaks' articles of incorporation and bylaws and determined that they are consistent with the requirements of 393.900 RSMo. This prompted Staff to file an amendment to its recommendation removing a contingency from its previous recommendation. The Commission set a time for responses to Mills' application, request for waiver, and Staff's recommendations. No responses were received

Having reviewed the filings, the Commission finds that the proposed transfer to Carriage Oaks is not detrimental to the public interest. The Commission will approve the

[1] There are currently only seven customers, there are no houses currently under construction, and there are no plans to begin future construction at this time.

transfer of the water assets for the Mills system to Carriage Oaks. So the parties may effectuate the transfer quickly, which will resolve other pending actions before the Commission and in the Circuit Court of Stone County, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Mills is authorized to transfer its system water utility assets to Carriage Oaks.

2. Mills shall notify the Commission of closing on the transfer of the water assets to Carriage Oaks within five days after such closing.

3. Mills is authorized to cease providing water service immediately after closing on the assets.

4. If closing does not take place within 30 days of the effective date of this order, Mills shall submit a status report in this file 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 the closing takes place, or until Mills determines that the transfer of the assets will not occur.

5. If Mills determines that a transfer of the assets will not occur, the company shall notify the Commission.

6. After the above notice of the transfer of the water assets to Carriage Oaks is received from Mills, the water CCN applying to Mills' Carriage Oaks Estates Subdivision shall be cancelled.

7. This order shall be effective on September 24, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Coleman, Holsman, and Kolkmeyer CC., concur.
Rupp, C., absent.

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Qualified Extraordinary Costs	)))))	**File No. EO-2022-0040**
In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Energy Transition Costs Related to the Asbury Plant	))))))	**File No. EO-2022-0193**

AMENDED REPORT AND ORDER

PUBLIC UTILITIES

§3. Functions and powers

Securitization is a financing technique in which certain assets are legally isolated within a special purpose entity. Investors then purchase securities that represent either debt or equity interest in the special purpose entity. The special purpose entity will issue bonds backed primarily by a statutory and regulatory right to receive a charge to be paid by a utility's customers. The securitized bonds are non-recourse to and bankruptcy remote from any operating company.

§3. Functions and powers

The goal of securitization is to structure the securities in a way that will allow them to achieve the highest bond rating possible. That will allow the issuer to set the price for those bonds at the lowest interest rate possible, thus saving ratepayers money compared to the amount they would have to pay if a traditional method of financing, at a higher interest rate, were used.

§3. Functions and powers

Section 393.1700.2(3)(c)b, RSMo, requires the Commission to find that the securitization process are expected to provide net present value benefits to customers when compared to recovery of costs through other, traditional methods of ratemaking.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Qualified Extraordinary Costs	)))))	**File No. EO-2022-0040**
In the Matter of the Petition of The Empire District Electric Company d/b/a Liberty to Obtain a Financing Order that Authorizes the Issuance of Securitized Utility Tariff Bonds for Energy Transition Costs Related to the Asbury Plant	))))))	**File No. EO-2022-0193**

AMENDED REPORT AND ORDER

Issue Date: September 22, 2022

Effective Date: October 2, 2022

TABLE OF CONTENTS

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CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

FINANCING ORDER

Procedural History

On January 19, 2022,[1] The Empire District Electric Company d/b/a Liberty (Liberty) filed a verified petition for financing order seeking authority to issue securitized utility tariff bonds regarding the extraordinary costs incurred by Liberty during the anomalous weather event of February 2021 commonly known as Winter Storm Uri. That petition was assigned Commission File No. EO-2022-0040.

Similarly, on March 21, Liberty filed a verified petition for financing order seeking authority to issue securitized utility tariff bonds to recover energy transition costs associated with retirement of Liberty's Asbury coal-fired generating plant. That petition was assigned Commission File No. EO-2022-0193.

Liberty filed a motion on April 18, asking the Commission to consolidate the two cases for all purposes. The Commission responded on April 27 with an order consolidating the two cases for purposes of the hearing and procedural schedule, but reserving the question of whether to issue one financing order for both cases, or to issue a separate financing order for each case.

The Midwest Energy Consumers' Group (MECG) was allowed to intervene in both cases. Renew Missouri Advocates d/b/a Renew Missouri (Renew Missouri) was allowed to intervene in EO-2022-0193, but did not apply to intervene in EO-2022-0040.

The parties prefiled direct, rebuttal, and surrebuttal testimony. An evidentiary hearing was held on June 13 through June 16. The parties filed post-hearing briefs on July 13, and reply briefs on July 20.[2]

[1] At dates refer to 2022, unless otherwise indicated.
[2] The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).

The Commission issued its Report and Order on August 18, 2022, to be effective on August 28, 2022. Liberty, Public Counsel, and Evergy Metro,Inc. d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc. d/b/a Evergy Missouri West (collectively Evergy) filed timely applications for rehearing. In addition, Union Electric Company d/b/a Ameren Missouri filed an *amicus curiae* brief advocating for a correction in the order. Staff responded to Liberty, Evergy, and Ameren Missouri, and Liberty responded to Public Counsel on September 8, 2022.

After reviewing the filings of the parties, the Commission has decided that one aspect of its Report and Order must be amended. The calculated total of Liberty's energy transition costs related to the retirement of its Asbury electrical generating plant is described in the decision section of issue 1 B of the August 18 order as $81,241,471. The correct total, based on the decisions embodied in the order, is $82,921,331. That figure is corrected in this order. That is the only substantive change being made in this order.

This Amended Report and Order will be effective in ten days. If anyone believes that rehearing, reconsideration, or clarification is needed, they must file a new or renewed application for rehearing, reconsideration, or clarification before the effective date of this order.

Description of Securitization

Findings of Fact

1. Securitization is a financing technique in which certain assets are legally isolated within a special purpose entity. Investors then purchase securities that represent either debt or equity interest in the special purpose entity.[3]

[3] Niehaus Direct, Ex. 18, Page 2, Lines 17-20.

2. The special purpose entity will issue bonds backed primarily by a statutory and regulatory right to receive a charge to be paid by a utility's customers. The securitized bonds are non-recourse to and bankruptcy remote from any operating company, in this case, Liberty.[4]

3. Securitization is a process authorized for the first time in Missouri by the legislature in the 2021 general legislative session.[5]

4. As authorized by the securitization statute, Liberty seeks authority from the Commission to create one or more wholly-owned special purpose entities, which will be incorporated as Delaware limited-liability companies with Liberty as the sole member. The special purpose entity, or entities, will serve as the issuer of the bonds. Liberty will then create and sell the right to impose, bill, and receive Securitized Utility Tariff Charges to the special purpose entities as issuer of the bonds. The special purpose entities will pay Liberty for the right to impose, bill, and receive the Securitized Utility Tariff Charges by issuing bonds, thereby acquiring all of Liberty's right, title, and interest to collect the Securitized Utility Tariff Charges from Liberty's ratepayers.[6]

5. The goal of securitization is to structure the securities in a way that will allow them to achieve the highest bond rating possible. That will allow the issuer to set the price for those bonds at the lowest interest rate possible, thus saving ratepayers money compared to the amount they would have to pay if a traditional method of financing, at a higher interest rate, were used.[7]

[4] Niehaus Direct, Ex. 18, Page 3, Lines 2-3.
[5] HB 734, Section 393.1700, RSMo, effective August 28, 2021.
[6] Niehaus Direct, Ex. 18, Page 8, Lines 12-20.
[7] DeCourcey Direct, Ex. 5, Page 6, Lines 7-13.

Conclusions of Law

A. Liberty is an electric corporation as defined in Section 386.020(15), RSMo 2016.

B. Section 393.1700.2(1) allows an electrical corporation, which includes Liberty, to petition the Commission for a financing order to allow for issuance of "securitized utility tariff bonds" to finance "energy transition costs."

C. "Energy transition costs" are defined by Section 393.1700.1(7) as including all of the following:

> (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;
>
> (b) Pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electrical generating facility occurring before August 28, 2021;

D. Liberty sought to securitize "energy transition costs" associated with the retirement of its Asbury coal-fired electric generating plant in its petition in File No. EO-2022-0193.

E. Section 393.1700.2(2) allows an electrical corporation, which includes Liberty, to petition the Commission for a financing order to allow for issuance of "securitized utility tariff bonds" to finance "qualified extraordinary costs."

F. "Qualified extraordinary costs" are defined Section 393.1700.1(13) as:

> Costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would case extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events;

G. Liberty sought to securitize "qualified extraordinary costs" associated with the anomalous weather event of February 2021, known as Winter Storm Uri, in its petition in File No. EO-2022-0040.

Should the Commission issue separate financing orders for Liberty's petition for securitization of energy transition costs and its petition for securitization of qualified extraordinary costs? Or should it issue a combined financing order for the two petitions?

This issue was not identified by the parties. Rather it was raised by the Commission in deciding that the two petitions filed by Liberty would not be consolidated for all purposes.

Findings of Fact

6. Larger utility securitization issuances tend to benefit from improved investor marketability and secondary liquidity, which can support lower pricing of the issuance, resulting in lower costs for ratepayers.[8]

7. In addition, there are a number of transaction costs associated with the issuance of the securities that are fixed costs that do not vary with the amount being securitized. Issuing a single bond issue in a combined transaction would avoid duplication

[8] Davis Rebuttal, Ex. 107, Page 9, Lines 20-21. *See also*, Ex. 24 and Transcript, Vol. 7, Page 530, Lines 12-18.

of those fixed costs.[9] Avoiding the duplication of those fixed transaction costs could save over $1 million in transaction costs.[10]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

Given the likelihood of increased costs that would result from separate securitizations, the Commission will issue a single financing order regarding both energy transition costs and qualified extraordinary costs.

The Issues

The securitization statute[11] mandates that the Commission's order regarding the petitions for securitization authority include certain findings and other provisions. This order will meet all requirements of the statute. Not all of those requirements are contested. The order will first address the issues contested by the parties and then will address the additional statutory requirements that were not contested.

1) What amounts should the Commission authorize Liberty to finance using securitized utility tariff bonds?

Findings of Fact

This issue is simply a summation of all other issues identified in this order. As such there are no additional findings of fact applicable to this issue.

[9] Transcript, Vol. 7, Page 530, Lines 5-12., *See also*, Ex. 24 and Davis Rebuttal, Ex. 107, Pages 9-10, Lines 22-23, 1-2.
[10] Transcript, Vol. 7, Page 545, Lines 3-7. *See also*, Ex. 24.
[11] Section 393.1700, RSMo 2016

Conclusions of Law

H. Section 393.1700.2(3)k RSMo requires this securitization order to include:

> "[a] statement specifying a future ratemaking process to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation or assignee provided that any such reconciliation shall not affect the amount of securitized utility tariff bonds or the associated securitized utility tariff charges paid by customers.

Decision

This amount is the sum of the amounts of qualified extraordinary costs determined in issue 1A and the amount of energy transition costs determined in issue 1B, plus the amount of upfront financing costs determined in issue 4. That total is $290,382,903.

A) What amounts of qualified extraordinary costs should the Commission authorize Liberty to finance for Winter Storm Uri?

Findings of Fact

8. Between February 13 and 20, 2021, three severe winter storms struck portions of the United States. That winter weather event has been termed Winter Storm Uri. Much of the Midwest, including Liberty's service area, experienced unseasonably cold temperatures, resulting in rolling electrical blackouts and extreme natural gas price spikes.[12]

9. During the peak price period of February 16 and 17, the price of natural gas escalated because of high demand and limited availability of natural gas due to production problems resulting from the extreme cold. Similarly, power prices for electricity with the Southwest Power Pool (SPP) also surged during Winter Storm Uri. SPP on-peak day ahead locational marginal prices for February 15 through 19 averaged 11,280 percent

[12] Olsen Direct, Ex. 9, Schedule JO-3, Page 6.

higher than the five-year average for the period, hitting $3,821.05 per megawatt hour for February 18 delivery.[13]

10. During Winter Storm Uri, Liberty experienced natural gas pressure limitations that affected production at its natural gas-powered electrical production units.[14]

11. Liberty incurred approximately $193 million in extraordinary fuel costs for service to Missouri customers arising from Winter Storm Uri.[15] Liberty seeks to recover those extraordinary fuel costs as "Qualified Extraordinary Costs" under the securitization statute.

12. Recovery of those fuel costs under the six-month recovery period established in Liberty's Fuel Adjustment Clause would create extreme customer rate impacts.[16]

13. In total, Liberty seeks authority to securitize $221,645,532 for costs related to Winter Storm Uri. This amount includes approximately $193,402,000 for fuel costs, $24,169,000 for Carrying Costs, $419,000 for Deferred Legal Costs, and $3,655,000 for Upfront Costs.[17]

Conclusions of Law

I. Section 393.1700.1(13) defines "Qualified Extraordinary Costs as:

> Costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

[13] Olsen Direct, Ex. 9, Schedule JO-3, Page 15.
[14] Olsen Direct, Ex. 9, Schedule JO-3, Pages 27-35.
[15] Doll Direct, Ex. 2, Page 13, Lines 4-6.
[16] DeCourcey Direct, Ex. 5, Page 5, Lines 1-8.
[17] Emery Surrebuttal, Ex. 8, Page 10, Figure CTE-2.

J. Section 393.1700.2(2), RSMo sets out the content that must be included in a utility's petition for a financing order to finance qualified extraordinary costs.

Decision[18]

The Commission finds that Liberty's cost in the amount of $199,561,572 incurred by Liberty in relation to Winter Storm Uri are prudently incurred costs of an extraordinary nature that would cause extreme customer rate impacts if reflected in customer rates recovered through customary ratemaking and as such are "Qualified Extraordinary Costs" as defined in Section 393.1700.1(13), RSMo. The Commission further finds that Winter Storm Uri was an "anomalous weather event" within the meaning of that statutory definition.

B) What amounts of energy transition costs should the Commission authorize Liberty to finance for Asbury?

Findings of Fact

14. Asbury Unit 1 was a coal-fired Babcock & Wilcox cyclone steam generator that was commissioned in 1970. When it began operations, it had a nominal rating of 206 MW and sourced its coal onsite via mine mouth operation. In 1990, the plant was converted to use a blend of low-sulfur Wyoming coal and local bituminous coal[19]

15. A selective catalytic reduction system was installed at Asbury in 2008 to reduce nitrogen oxide emissions. In 2014, the Asbury plant was retrofitted with an Air Quality Control System (AQCS) to comply with federal environmental regulations.[20]

[18] The number indicated in this section is derived from the Commission decisions on particular issues described subsequently in this order.
[19] Landoll Direct, Ex. 13, Page 3, Lines 12-18.
[20] Landoll Direct, Ex. 13, Page 4, Lines 11-20.

16. Asbury was retired near the beginning of 2020, and decommissioning and dismantling of the plant is ongoing.[21]

17. Liberty seeks to recover $140,774,376 in energy transition costs for Asbury.[22]

Conclusions of Law

K. Section 393.1700.1(7) defines "Energy Transition Costs" as including all of the following:

> (a) Pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under this section where such early retirement or abandonment is deemed reasonable and prudent by the commission through a final order issued by the commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements;
> (b) Pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021.

L. Section 393.1700.2(1), RSMo sets out the content that must be included in a utility's petition for a financing order to finance energy transition costs.

[21] Landoll Direct, Ex. 13, Page 5, Lines 15-20.
[22] Emery Surrebuttal, Ex. 8, Page 1, Lines 20-21.

Decision[23]

The Commission finds that Liberty's energy transition costs related to the retirement of its Asbury electrical generating plant in the amount of $82,921,331 may be financed using securitized utility tariff bonds and recovery of such is just and reasonable.

2) Winter Storm Uri

A) What amount of costs, if any, that Liberty is seeking to securitize would Liberty recover through customary ratemaking?
B) What is the appropriate method of customary ratemaking absent securitization?
C) Under RSMo 393.1700.2(2)(e), what is the "customary method of financing"? What are the costs that would result "from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates"? and
D) Should Liberty's recovery include more than 95% of fuel and purchased power costs?

These four sub-issues are interrelated and the Commission will address them together.

Findings of Fact

18. Liberty incurred approximately $193 million in extraordinary fuel costs for its Missouri customers during Winter Storm Uri.[24]

19. Absent securitization, Liberty would recover its fuel and purchased power costs through a combination of its general rates and the Fuel Adjustment Clause (FAC) which is established within its tariff.[25]

20. Liberty's FAC does not allow the company to recover 100 percent of its fuel and purchased power costs. Rather, the FAC includes a 95/5 sharing mechanism by

[23] The number indicated in this section is derived from the Commission decisions on particular issues described subsequently in this order.
[24] Doll Direct, Ex. 2, Page 13, Lines 4-6.
[25] Mastrogiannis Rebuttal, Ex. 104, Pages 7-8, Lines 20-21, 1-2.

which the company is allowed to recover only 95 percent of its fuel and purchased power costs through the FAC.[26]

21. The Commission included the 95/5 sharing mechanism in Liberty's FAC to provide the company an incentive to operate at an optimal efficiency while still providing the company an opportunity to earn a fair return on its investment.[27]

22. The same sharing incentive would give Liberty an incentive to plan for and to efficiently manage extraordinary events that could lead to a request to securitize extraordinary fuel costs.[28]

23. Because of the extraordinary amount of the fuel and purchased power costs associated with Winter Storm Uri, Liberty did not seek to recover those costs through its FAC. Instead, it requested an Accounting Authority Order (AAO) in Commission File No. EU-2021-0274, seeking recovery of the Winter Storm Uri related costs as well as the remaining five percent of those February 2021 fuel and purchased power costs, carrying costs and other storm related costs, including outside legal fees. Following the passage of the securitization statute, Liberty sought to recover those costs it would have deferred through the AAO through the securitization proposed in this case.[29] Liberty's request for an AAO remains pending before the Commission, but is being held in abeyance pending resolution of this case.[30]

24. Under an AAO, the utility is allowed to defer extraordinary costs for possible recovery in a future rate case. The Commission could allow recovery under an

[26] Mastrogiannis Rebuttal, Ex. 104, Page 8, Lines 2-18.
[27] Transcript, Vol. 3, Page 289, Lines 18-25.
[28] Mantle Rebuttal, Ex. 200, Page 29, Lines 13-16.
[29] Bolin Rebuttal, Ex. 102, Page 3, Lines 2-21.
[30] *See,* EU-2021-0274, Order Directing Filing, Issued April 4, 2022.

appropriate amortization period with the utility being allowed appropriate carrying costs during the period of amortization. Under these circumstances, Staff would likely recommend at least a ten-year amortization period, with carrying costs calculated at the company's long-term debt rate.[31]

25. If an AAO was established, Staff would not recommend deferral or recovery of the five percent of the utility's share of fuel and purchased power costs under the FAC. Staff contends it is appropriate to expect Liberty's shareholders to share in the financial impact of Winter Storm Uri.[32]

Conclusions of Law

M. Section 386.266.1, RSMo allows an electrical corporation to apply to the Commission to approve rate schedules that allow for "periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs." That section also allows the Commission to "include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities." The 95/5 sharing provision in Liberty's FAC tariff is designed to provide such an incentive.

N. In its report and order that initially established Liberty's FAC, the Commission found that "a prudence review can be expected to evaluate the major decisions a utility makes. However, a utility makes thousands of small decisions every

[31] Bolin Rebuttal, Ex. 102, Page 4, Lines 1-19.
[32] Bolin Rebuttal, Ex. 102, Pages 4-5, Lines 20-23, 1-8.

hour regarding fuel, purchased power, and off-system sales. It is not practical to expect a prudence review to uncover and evaluate every one of those decisions."[33]

O. Commission Rule 20 CSR 4240-20.090(8)(A)2.A(XI) provides that extraordinary costs are not to be passed through the company's FAC.

P. The securitization statute, Section 393.1700.2(3)(c) requires a financing order issued by the Commission to include all of the following elements:

> a. The amount of securitized utility tariff costs to be financed using securitized utility tariff bonds *and a finding that recovery of such costs is just and reasonable and in the public interest*. The commission shall describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charges and specify the period over which securitized utility tariff costs and financing costs may be recovered;
> b. *A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds.* Notwithstanding any provisions of this section to the contrary, in considering whether to find the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest, the commission may consider previous instances where it has issued financing orders to the petitioning electrical corporation and such electrical corporation has previously issued securitized utility tariff bonds; …
> (emphasis added)

There are two important provisions of this section of the statute that should be noted. First, the section explicitly requires the Commission to determine that the imposition and collection of the utility tariff charge that will result from the securitization of these costs will be just and reasonable and in the public interest. Second, in making its determination as to whether the securitization of these costs is just and reasonable and in the public

[33] *In the Matter of The Empire District Electric Company's Tariffs to Increase Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, 17, Mo. P.S.C. 631, 667 (2008)

interest, the Commission is directed to compare the results of the securitization to the results of a recovery of those costs using traditional (non-securitization) methods.

Q. Liberty asserts that it has a general right to recover all prudently incurred costs. The Missouri Supreme Court has found otherwise. In a 2021 case, *Spire Missouri, Inc. v. Public Service Commission*,[34] Spire Missouri challenged the Commission's decision to disallow a portion of the company's prudently incurred cost of pursuing its general rate case. In upholding the Commission's decision, the Supreme Court said:

> In terms of their reasonableness, these expenditures were entitled to a presumption of prudence, and the ***prudence*** of the expenditures was never called into question. Nonetheless, the PSC concluded that including all of these expenditures in setting Spire's future rates was not ***just*** because some of the expenses were not fair to ratepayers in that they were incurred to benefit (if anyone) Spire's shareholders. Implicit in Spire's argument is an assertion that it is entitled to recover all prudent expenditures in its rates. This is not so. In setting rates the PSC has broad discretion to include or exclude expenditures to arrive at rates it deems to be 'just and reasonable,' subject, of course, to judicial review that the PSC's conclusions are supported by competent and substantial evidence and not arbitrary, capricious, or an abuse of discretion. (Internal citations omitted. Emphasis in original.)

Decision

Under customary methods of ratemaking, Liberty would recover its Winter Storm Uri related fuel and purchased power costs by starting with its FAC. Liberty's FAC includes a 95/5 sharing provision by which the company recovers 95 percent of those costs. In the rate cases in which Liberty's FAC was established, the Commission found that the sharing mechanism was necessary to ensure the company had sufficient financial incentive and motivation to operate at maximum efficiency. The same financial incentives and motivations apply in the situation facing Liberty during Winter Storm Uri.

[34] 618 S.W.3d 225 (Mo. banc 2021).

The prudence of Liberty's decisions relating to Winter Storm Uri will be addressed in subsequent issues, but for this issue, prudence is not relevant. The securitization statute specifically requires the Commission to compare the results of securitization to the results under traditional methods of cost recovery. It also requires the Commission to find that the imposition and collection of the utility tariff charge resulting from the securitization of these costs will be just and reasonable and in the public interest.

The Commission finds that allowing Liberty to use securitization to recover the five percent of its fuel and purchased power costs related to Winter Storm Uri that it would not be permitted to recover under traditional methods of rate making is not just and reasonable, nor is it in the public interest.

E) Should Liberty's recovery reflect an offset based on higher than normal customer revenues received by Liberty during Winter Storm Uri?

Findings of Fact

26. During the abnormally cold weather resulting from Winter Storm Uri, Liberty sold more electricity than it would have sold during a normal February. Staff compared Liberty's actual revenues to its expected revenues during a normal February and concluded that Liberty collected $2,760,686 in "excess" revenues. Staff proposes to use this amount of "excess" revenue to partially offset the "Qualified Extraordinary Costs" incurred by Liberty.[35]

Conclusions of Law

There are no additional conclusions of law for this issue.

[35] Lange Rebuttal, Ex. 108, Page 33, Lines 11-16. *See also,* McMellen Rebuttal, Ex. 100, Page 5, Lines 12-17.

Decision

As the Commission previously concluded, the securitization statute requires the Commission to find that the recovery of costs to be financed using securitized utility tariff bonds is just and reasonable and in the public interest. Staff seeks to use this requirement to justify the offset of $2,760,688 in "excess" revenues. Staff's proposal is not justified.

The securitization statute defines what is to be treated as a qualified extraordinary cost and that definition does not call for any offset of revenues against those costs. This is the same argument that Liberty raised against the inclusion of a five percent reduction in fuel and purchased power discussed in the previous issue. But that argument is applicable here, while it was not in the other circumstance.

The difference is that Staff's theory of offsetting revenue would not be a part of the company's recovery under traditional ratemaking. In traditional ratemaking no revenue adjustment is made for the effect of past weather. If a summer is hot and an electric company sells a lot of electricity to run air conditioners, no adjustment is made to reduce the company's rates to retroactively claw back that "excess" revenue. Similarly, the company would not be allowed to increase its rates to remedy the shortfall in expected revenue that would result from a cooler than normal summer. Going forward a company's future rates would be normalized to account for the effect of weather, but that weather normalization would affect future rates, and would not be used to balance out the effect on revenue resulting from past weather.

Staff's proposal is not founded in traditional ratemaking and the proposed offsetting of qualified extraordinary costs eligible for securitization under the securitization statute would not be just and reasonable. Staff's proposed offset is rejected.

F) Should Liberty's recovery reflect an offset based on revenues that Liberty's Riverton 11 unit should have generated during Winter Storm Uri, and, if so, how much?

Findings of Fact

27. Riverton Unit 11 is a 1966 Westinghouse W191 dual fuel turbine that Liberty purchased used. The turbine was placed into service in 1988 at the Riverton generating station in Riverton, Kansas.[36]

28. Riverton Unit 11, and its sister unit, Riverton Unit 10, each with a generating capacity of 15 MW, run on natural gas as a primary fuel, but are capable for running on fuel oil (diesel) as a backup fuel source.[37]

29. Due to air permit restrictions imposed by the Kansas Department of Health and Environment, Riverton Units 10 and 11 do not routinely operate on fuel oil.[38]

30. The use of fuel oil in Riverton Units 10 and 11 is permitted only under the following conditions:

> a. The natural gas delivery system must break down and the required gas supply become unavailable to Liberty;
> b. The power requirements from the Riverton station cannot be assumed by power generating equipment other than Unit 10 and Unit 11; and
> c. The owner or operator shall be permitted to use distillate fuel oils as needed to meet the black start testing requirements by any Federal or State regulatory agency. Water injection will not be required during black start testing. None of the electricity produced during the black start testing shall be sold on the bulk electric system.[39]

[36] Mushimba Surrebuttal, Ex. 10, Page 5, Lines 1-3.
[37] Hull Rebuttal, Ex. 105, Page 2, Lines 3-7.
[38] Mushimba Surrebuttal, Ex. 10, Page 5, Lines 20-26.
[39] Hull Rebuttal, Ex. 105, Page 3, Lines 12-22. These limitations are found in the Kansas air permit, pages 11-12. That permit is attached to Mushimba Surrebuttal, Ex. 10, Schedule BM-2.

31. Riverton Unit 10 was on forced outage beginning on February 8, 2021, before Winter Storm Uri, and was not available for use at any time during the storm.[40]

32. On February 12, 2021, at the start of Winter Storm Uri, Riverton Unit 11 was forced into outage due to a limited natural gas supply.[41]

33. Liberty notified the Kansas Department of Health and Environment of the emergency conditions on the morning of February 15, 2021, and the Kansas authorities authorized the use of fuel oil to power Riverton Unit 11 at that time.[42]

34. After receiving permission to use fuel oil to power Riverton Unit 11, Liberty unsuccessfully attempted to start that unit, beginning at 12:01 p.m. on February 15, 2021. Liberty tried to start the unit another 26 times over the next 28 hours but it would not start.[43]

35. At the time Liberty began trying to start Riverton Unit 11 the temperature as measured by the plant's weather station was -0.7 degrees Fahrenheit. These are difficult conditions in which to start a turbine on diesel fuel.[44] The extreme cold was likely the reason the unit would not start.[45]

36. Electric production from Riverton Unit 11 would have been very valuable during Winter Storm Uri. Staff calculated that Liberty had enough fuel oil in storage at Riverton to allow Riverton Unit 11 to run for a set number of hours during Winter Storm Uri. Staff then calculated a price for that available run time from February 15 using hourly day ahead locational market prices published by the SPP integrated resource market at

[40] Hull Rebuttal, Ex. 105, Page 3, Lines 3-5.
[41] Hull Rebuttal, Ex. 105, Page 3, Lines 6-7.
[42] Mushimba Surrebuttal, Ex. 10, Page 7, Lines 11-15.
[43] Mushimba Surrebuttal, Ex. 10, Page 7, Lines 11-17
[44] Mushimba Surrebuttal, Ex. 10, Page 7, Lines 18-24.
[45] Transcript, Vol. 3, Page 197, Lines 6-13.

Liberty's Riverton node. Staff took the sum of the prices for the amount of hours Riverton Unit 11 could have run and multiplied it by the 15 MW of electricity that the unit could have produced if it has been able to start, and calculated that Liberty had lost the opportunity to earn several million dollars in sales revenue for its customers if Riverton Unit 11 had been able to start.[46] Staff proposed that the amount that Liberty might have earned if Riverton Unit 11 had been started be disallowed from Liberty's recovery because Liberty's failure to tune the unit for operation in winter ambient temperatures was imprudent.[47]

37. Public Counsel noted that Staff's proposed disallowance was based on the number of hours that Riverton Unit 11 could have run using the amount of available fuel oil. The fuel oil tanks at Riverton were not full at the start of Winter Storm Uri. If the fuel oil tanks had been full, Riverton Unit 11 could have been run longer and earned more money. On the basis that Liberty's failure to keep its fuel oil tanks full was imprudent, Public Counsel calculated that the disallowance proposed by Staff should have been substantially larger. Public Counsel proposed a disallowance in that larger amount. [48]

38. Liberty's witness, Dr. Brian Mushimba, who is the Senior Director for Generation Operations – Central Region for Liberty, and holds a Ph.D. in engineering,[49] credibly explained:

[46] Hull Rebuttal, Ex. 105, Page 7, Lines 3-17. The description of the disallowance proposed by Staff and Public Counsel is deliberately vague because the details of Liberty's black start capabilities and the related numbers are designated as confidential or highly confidential.
[47] Hull Rebuttal, Ex. 105, Page 8, Lines 8-11.
[48] Robinett Surrebuttal, Ex. 211, Pages 4-5, Lines 3-22, 1-18.
[49] Mushimba Surrebuttal, Ex. 10, Page 1, Lines 12-13. In contrast to Dr. Mushimba's training as an engineer and experience regarding operation of electrical generating units, Staff's witness, Jordan T. Hull, has a degree in biological engineering, and has never been responsible for tuning or starting a combustion turbine such as Riverton Unit 11. Transcript, Vol. 3, Page 310, Lines 16-19. .

> tuning a generation turbine is a complex task of adjustment or modification of the internal combustion of the engine of the unit to yield optimal performance and efficiency at given ambient temperatures. It's an iterative process that ensures that at a given ambient temperature, the fuel-oxygen ratio and the subsequent combustion is optimal and the resultant energy output is maximized while controlling undesirable byproducts of the combustion, such as emissions.[50]

39. The tuning process requires several months of advance planning to implement.[51] Further, in order to tune the unit for use at a particular temperature, the ambient air must be at that temperature. In other words, to tune the unit to sub-zero temperatures, the air temperature must be sub-zero.[52]

40. Tuning a unit to operate on natural gas does not improve the performance of the unit when operating on fuel oil.[53]

41. Liberty's air permit from the Kansas Department of Health and Environment did not authorize the burning of fuel oil for the purpose of tuning Riverton Unit 11.[54]

42. As previously found, Liberty's air permit does allow for the burning of fuel oil to meet black start testing requirements.[55]

43. A black start is a circumstance in which a utility must restart its electrical generating system after a blackout. Most electrical generating units require flowing electricity to be able to start. In a total blackout no flowing electricity will be available, so a black start unit must be able to begin generating electricity on its own, which it can then send into the distribution system to restart additional generation units.[56]

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[50] Mushimba Surrebuttal, Ex. 10, Page 5, Lines 5-12.
[51] Transcript, Vol. 3, Pages 202-203, 2-25, 1-6.
[52] Transcript, Vol. 3, Page 194, Lines 3-10.
[53] Mushimba Surrebuttal , Ex. 10, Page 7, Lines 1-10.
[54] Mushimba, Surrebuttal, Ex. 10, Page 6, Lines 6-7.
[55] As previously indicated much of the testimony surrounding black start capabilities is confidential or highly confidential.
[56] Transcript, Vol. 3, Page 192, Lines 13-22.

44. Black start testing is not the same as tuning and is an involved process that cannot be undertaken in an emergency situation.[57]

45. Riverton Unit 11 was not designated with SPP as a black start unit at the time of Winter Storm Uri.[58]

Conclusions of Law

R. The disallowance proposed by Staff and Public Counsel challenges the prudence of Liberty's decision not to tune Riverton Unit 11 to operate at the extremely cold temperatures experienced during Winter Storm Uri. The Commission has described its prudence standard as follows:

> The company's conduct should be judged by asking whether the conduct was reasonable at the time, under all circumstances, considering that the company had to solve its problems prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[59]

S. The Commission's prudence standard also presumes that a utility's costs have been prudently incurred. However, that presumption does not survive a showing of inefficiency or improvidence. If some other participant in the proceeding creates "a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent."[60]

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[57] Transcript, Vol. 4 (confidential), Pages. 3-15. Dr. Mushimba described the black start testing requirements in detail during in camera portions of the hearing.
[58] Mushimba Surrebuttal, Ex. 10, Pages 8-9, Lines 7-24, 1-16. Dr. Mushimba provides much more detail about the designation of black start units in his testimony, but that testimony is designated as confidential.
[59] *In the Matter of Union Electric Company of St. Louis, Missouri, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the Company, and In the Matter of the determination of in-service criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway rate base and related issues*, 27 Mo. P.S.C. (N.S.) 164, 194 (1984), *quoting*, *In re. Consolidated Edison Company of New York, Inc.* 45 P.U.R., 4th, 1982.
[60] *Union Electric*, at 193

T. The Commission's prudence standard has subsequently been recognized by reviewing courts.[61]

U. Liberty's witness, John J. Reed, provides a succinct description of the regulatory prudence standard in his surrebuttal testimony. The Commission will adopt that description:

> The standard for the evaluation of whether costs are, or are not, prudently incurred is built on four principles. First, prudence relates to actions and decisions. Costs themselves are neither prudent nor imprudent. It is the decision or action that led to cost incurrence that must be reviewed and assessed, not the results of those decisions. In other words, prudence is a measure of the quality of decision-making, and does not reflect how the decisions turned out. The second feature is a presumption of prudence, which is often referred to as a rebuttable presumption. The burden of showing that a decision is outside of the reasonable bounds falls, at least initially, on the party challenging the utility's actions. The third feature is the total exclusion of hindsight from a properly constructed prudence review. A utility's decisions must be judged based upon what was known or reasonably knowable at the time of the decision being made by the utility. Information that was not known or reasonably knowable at the time of the decision being made cannot be considered in evaluating the reasonableness of a decision and subsequent information on "how things turned out" cannot influence the evaluation of the prudence of a decision. The final feature is that decisions being reviewed need to be compared to a range of reasonable behavior; prudence does not require perfection, nor does prudence require achieving the lowest possible cost. This standard recognizes that reasonable people can differ and that there is a range of reasonable actions and decisions that is consistent with prudence. Simply put, a decision can only be labelled as imprudent if it can be shown that such a decision was outside the bounds of what a reasonable person would have done under those circumstances.[62]

[61] *See, e.g., State ex rel. Associated Natural Gas Co. v. Pub. Serv. Com'n,* 954 S.W. 2d 520 (Mo. App. W.D. 1997. *See also*. *Office of Public Counsel v. Mo. Pub. Serv. Com'n*, 409 S.W.3d 371 (Mo. banc 2013) (A presumption of prudence is appropriately applied in arms-length transactions, but not in transactions with affiliates.)

[62] Reed Surrebuttal, Ex. 1, Pages 7-8, Lines 5-24, 1-2.

Decision

Liberty could have made substantial off-system sales if it had been able to start operating Riverton Unit 11 on fuel oil during the supply disruptions and resulting high electricity market prices occasioned by Winter Storm Uri. Staff and Public Counsel argue that Liberty would have been able to start that unit on fuel oil if it had properly tuned the unit on fuel oil to the type of temperatures likely to be encountered in the winter months. That argument is not supported by the evidence.

First, Liberty's air permit from the Kansas Department of Health and Environment did not allow Liberty to burn fuel oil in Riverton Unit 11 except in specified emergency conditions, the most important being that the natural gas supply for the turbine must have become unavailable. During Winter Storm Uri the natural gas supply did indeed become unavailable and the Kansas authorities responded by allowing Liberty to burn fuel oil in that unit. Unfortunately, despite repeated efforts, Liberty was unable to start the unit on fuel oil.

The Kansas air permit did allow Liberty to burn fuel oil to "meet the black start testing requirements by any Federal or State regulatory agency." However, Riverton Unit 11 was not designated as a black start unit with SPP at the time of Winter Storm Uri, so no black start testing requirements would have been applicable to that unit. As a result, the exceptions contained in the Kansas air permit would not have applied, and Liberty was forbidden to burn fuel oil in the unit.

In any event, black start testing is not the same as tuning. There was no evidence that black start testing would have to be done at any particular time of the year. Thus, black start testing could have been performed during the summer, or even during more

moderate winter weather, and Liberty still would not have discovered that the unit would not start on fuel oil at sub-zero temperatures.

In summary, Liberty's air permit from Kansas authorities did not allow Liberty to burn fuel oil in Riverton Unit 11 for purpose of tuning that unit to operate during extremely cold weather. The Commission will not find that Liberty was imprudent for failing to violate that air permit. Even if Liberty had been permitted to tune the unit using fuel oil rather than natural gas, there is no indication that tuning the unit would have made any difference in Liberty's ability to start the unit on fuel oil in sub-zero temperatures.

Public Counsel's argument that Liberty was imprudent in not ensuring that its fuel oil tanks at Riverton were kept full before Winter Storm Uri is an extension of Staff's argument that Liberty was imprudent in failing to tune Riverton Unit 11 to operate in winter weather conditions. Since Staff's argument fails, Public Counsel's extension of that argument must also fail.

There was no evidence presented that would support a finding of imprudence, and the Commission will make no adjustments on that basis.

G) Should Liberty's recovery reflect a disallowance based on Liberty's resource planning?

Findings of Fact

46. Liberty is a member of the Southwest Power Pool (SPP).

47. Utilities that are members of an RTO commonly rely on market purchases as one source of generation in their portfolio.[63]

[63] Reed Surrebuttal, Ex. 1, Page 15, Lines 16-17.

48. Liberty is in compliance with SPP's Resource Adequacy requirements,[64] meaning Liberty needs to have accredited capacity 12 percent greater than its forecasted peak load.[65]

49. SPP uses complex and accepted methodologies to develop its resource adequacy requirements, including a biennial Loss of Load Expectation study with a "one day in ten year" criterion for determining reserve margins for resource adequacy requirements.[66]

50. Near the start of 2020,[67] Liberty retired its 200 MW Asbury coal plant.[68] The prudence of that retirement will be addressed in more detail later in this order with regard to securitization of Energy Transition Costs.

51. Liberty undertook an analysis of Asbury's economics in both 2017 and 2019, finding in its 2019 Integrated Resource Plan that retiring Asbury would result in significant savings for Liberty's customers.[69]

Conclusions of Law

V. The Commission's electric utility resource planning rule, 20 CSR 4240-22.010(2) states in part:

> The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. …

[64] Doll Direct, Ex. 2, Page 8, Lines 4-5.
[65] Mantle Rebuttal, Ex. 200, Page 24, Lines 6-7.
[66] Doll Surrebuttal, Ex. 4, Page 17, Lines 11-14.
[67] The exact retirement date is at issue in other aspects of this case.
[68] Doll Surrebuttal, Ex. 4, Page 4, Line 20.
[69] Doll Direct, Ex. 3, Page 3, Lines 20-22.

Decision

Public Counsel argues that Liberty's decision to retire its Asbury coal-fired plant was imprudent. The aspect of that decision that is at issue regarding Liberty's recovery of Winter Storm Uri fuel costs is Public Counsel's allegation that Liberty imprudently failed to plan to secure and retain sufficient capacity that it controls to meet the needs of its customers independent of its membership in, and purchases from, SPP. Public Counsel points to the unique circumstances that occurred during Winter Storm Uri to argue that Liberty should not have relied on the collective capacity available in the SPP market to serve its load, because, as shown by the events of Uri, that capacity can become very expensive when SPP's available capacity becomes strained.

No doubt, if Liberty had more capacity available to sell into the SPP market during Winter Storm Uri, it could have earned enough from those sales to offset the fuel costs that it now seeks to securitize. But that fact is entirely based on perfect hindsight. Liberty planned to have sufficient capacity to meet all requirements established by SPP. Other than showing a bad result, Public Counsel has not demonstrated any imprudence in Liberty's planning process. The Commission will not impose the disallowance proposed by Public Counsel.

H) Should Liberty's recovery reflect a disallowance for income tax deductions for Winter Storm Uri costs?

Findings of Fact

52. Public Counsel asserts that Liberty expects to claim a Missouri jurisdictional tax deduction of $204,500,939 on the 2021 consolidated income tax return,[70] resulting in a tax savings due to the Winter Storm Uri loss of $48,753,024. Public Counsel would

[70] Riley Rebuttal, Ex. 208, Page 21, Lines 10-11.

gross that amount up to $64,012,720 and add carrying charges to bring the total reduction to $68,346,382.[71] Public Counsel argues this tax benefit should be recognized as a reduction in the amount of securitization.[72]

53. Public Counsel incorrectly asserts that the proceeds Liberty will receive from the securitization bonds are not taxable, so the company will be compensated, yet still enjoy a tax break for the loss.[73] In fact, the charges that will be used to pay the bonds is taxed as income to the utility.[74] Public Counsel's witness acknowledged that fact in his testimony at the hearing.[75]

54. The tax treatment of Winter Storm Uri losses may create a tax timing issue that will result in an adjustment of Accumulate Deferred Income Tax (ADIT) as an offset to Liberty's rate base. Customers do not receive the recorded amount of the ADIT liability, instead, they benefit because ADIT liability reduces rate base and customers are charged a lower revenue requirement reflecting the lower cost of capital.[76]

Conclusions of Law

W. Public Counsel's witness cites two provisions of the securitization statute to support his suggestion to use Liberty's asserted tax deduction as an offset to the amount to be securitized for Qualified Extraordinary Costs related to Winter Storm Uri. First, he cites the definition of "Energy Transition Costs" in Section 393.1700.1(7), RSMo, which includes some provisions relating to tax benefits of accumulated and excess deferred income taxes. However, the Winter Storm Uri costs are Qualified Extraordinary Cost, not

[71] Riley Rebuttal, Ex. 208, Page 21, Lines 15-19.
[72] Riley Rebuttal, Ex. 208, Page 21, Lines 12-13
[73] Riley Rebuttal, Ex. 208, Page 22, Lines 11-13.
[74] Bolin Surrebuttal, Ex. 103, Page 5, Lines 5-9.
[75] Transcript, Vol. 5, Page 391, Lines 6-14.
[76] Emery Surrebuttal, Ex. 8, Page 38, Lines 12-19.

Energy Transition Costs, and the definition of such costs, found at Section 393.1700.1(13), RSMo, contains no provisions regarding income taxes.

X. Public Counsel's witness also cites Section 393.1700.1(8), RSMo, which includes various taxes within the definition of "Financing Costs." Again, the costs in question are qualified extraordinary costs, not financing costs.

Y. Section 393.1700.2(3)(c)m calls for special treatment of ADIT, but only for energy transition costs and qualified extraordinary expenses that include retired or abandoned facility costs. Those provision do not apply to Winter Storm Uri costs.

Z. Section 393.1700.2(3)(c)k, RSMo. requires that this order provide for a reconciliation process that would require Liberty to account for any potential tax benefits that may lower its actual securitized utility tariff costs associated with Winter Storm Uri through a future rate case.

Decision

Public Counsel's proposal that income tax deductions for Winter Storm Uri costs be disallowed from the costs to be securitized is not supported by the facts or the law, and the Commission will not make that disallowance.

l) What are the appropriate carrying costs for Winter Storm Uri?

Findings of Fact

55. Liberty incurred Winter Storm Uri costs in February, 2021, but has not yet recovered those costs from its customers. The securitization statute allows Liberty to securitize and recover carrying costs. Liberty contends those carrying costs should be

calculated at its Weighted Average Cost of Capital (WACC), 6.77 percent, which the Commission set in Liberty's 2019 rate case, File No. ER-2019-0374.[77]

56. Staff agrees that Liberty must be allowed to recover carrying costs for Winter Storm Uri, but contends those carrying costs should be calculated using Liberty's long-term debt rate of 4.65 percent.[78]

57. The Winter Storm Uri costs are operating costs, not capital improvements or replacements to existing plant and equipment. It is inappropriate for Liberty to be allowed a profit on expenditures for the purchase of energy, as it would if carrying costs were calculated using its WACC.[79]

58. Public Counsel contends carrying costs should be recovered at Liberty's short-term cost of debt as they will, in fact be carried for less than two years.[80]

59. Public Counsel argues the short-term debt rate used should be Liberty's parent company's (LUCo's) average short-term debt rate for each month, starting with the financing of Winter Storm Uri costs in February 2021 until the securitized bonds are issued.[81]

Conclusions of Law

AA. Section 393.1700.1(13), which defines "qualified extraordinary costs" for purposes of the securitization statute, specifically states that such costs include carrying charges. The statute does not further define carrying charges.

[77] Hall Direct, Ex. 6, Page 4, Lines 14-20.
[78] McMellen Rebuttal, Ex. 100, Page 4, Lines 11-16. (As corrected at Transcript, Vol. 3, Page 211.)
[79] Murray Rebuttal, Ex. 206, Page 3, Lines 20-23.
[80] Murray Rebuttal, Ex. 206, Page 6, Lines 1-17.
[81] Murray Rebuttal, Ex. 206, Pages 7-8, Lines 12-15, 1-4. (As corrected at Transcript, Vol. 7, Page 501.)

Decision

The Commission believes that Staff's proposal to calculate carrying costs for Winter Storm Uri related costs at Liberty's long-term debt rate of 4.65 percent is most appropriate because the costs to be securitized are not capital costs and there is no reason Liberty should be allowed to earn a profit on those costs. Public Counsel's proposal to use monthly short-term debt rates for the purposes of calculating carrying costs is also inappropriate as the term to which the short-term debt rates would be applied is a period approaching two years.

J) What is the appropriate discount rate to use in calculating the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?

Findings of Fact

60. Staff's witness, Mark Davis, an investment banker, offered his opinion that a reasonable discount rate to use for Winter Storm Uri costs is the company's long-term cost of debt of 4.65 percent.[82]

Conclusions of Law

BB. Section 393.1700.2(3)(c)b requires that this financing order make a finding that the proposed securitization is expected to "provide quantifiable net present value benefits to customers" as compared to recovery of those costs without the issuance of the securitized bonds. In order to make that comparison, the Commission must determine the appropriate discount rate to be used in the calculations of the amounts that would be recovered without securitization.

[82] Transcript, Vol. 7, Pages 614-615, Lines 22-25-1.

Decision

This issue simply asks what discount rate should be plugged into a formula to determine whether securitization would be a benefit to Liberty's customers. It does not have a direct impact on the amount that Liberty should be allowed to recover through securitization. The Commission believes the appropriate discount rate to use in calculating the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking is Liberty's long-term debt rate of 4.65 percent as proposed by Staff witness Mark Davis.

3) Asbury

A) How much of the amounts, if any, that Liberty is seeking to securitize for Asbury would Liberty recover through traditional ratemaking?

Findings of Fact

61. Staff witness Amanda McMellen testified that Liberty's total energy transition costs, including carrying costs, should be $66,107,823.[83]

Conclusions of Law

CC. Section 393.1700.2(3)(c)b, RSMo requires the Commission to find that the securitization process are expected to provide net present value benefits to customers when compared to recovery of costs through other, traditional methods of ratemaking.

Decision

It is not clear why this question was identified as a separate issue by the parties. Staff suggests that Liberty should not be allowed to recover energy transition costs aside from what it would be able to recover through traditional ratemaking. Staff then argues that the amount Liberty should be allowed to recover will be determined by the answers

[83] Ex. 113, Page 1, Line 1.

to the other identified issues. No other party addresses this issue in their briefs. The Commission agrees that the total energy transition costs will be determined by the answers to the other identified issues and concludes a separate finding about this particular issue is not needed.

B) What is the appropriate method of customary ratemaking absent securitization? and
C) Under RSMo 393.1700.2(1)(f), what is the "traditional method of financing"? What are the costs that would result "from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become securitized utility tariff costs from customers"?

Findings of Fact

62. In compliance with the Commission's order in the company's 2019 rate case, File No. ER-2019-0374, Liberty established a regulatory liability account to track the costs associated with the retiring of Asbury.[84]

63. In traditional ratemaking, Liberty would include the various components of the Asbury retirement costs as regulatory asset and liability balances in its rate base total or in its proposed revenue requirements. Those costs would be amortized over a period of time.[85] Liberty suggests that amortization would be over a thirteen-year period,[86] and that amortization period was accepted by Staff.[87]

Conclusions of Law

DD. Section 393.1700.2(1)(f) requires a petition to securitize energy transition costs to include:

> A comparison between the net present value of the cost to customers that are estimated to result from the issuance of securitized utility tariff bonds

[84] Emery Direct, Ex. 7, Page 6, Lines 4-24.
[85] Emery Direct, Ex. 7, Page 7, Lines 8-16.
[86] Emery Direct, Ex. 7, Page 20, Lines 5-9.
[87] McMellen Rebuttal, Ex. 100, Page 8, Lines 18-19.

> and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become securitized utility tariff costs from customers. The comparison should demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers.

EE. Similarly, Section 393.1700.2(3)(c)b, RSMo requires the Commission to find that the securitization process is expected to provide quantifiable net present value benefits to customers when compared to recovery of costs through other, traditional methods of ratemaking.

Decision

The question presented in these issues is essentially the same, so they will be addressed together. The traditional method of ratemaking would occur through a general rate case and would entail amortization of the costs to be recovered over a period of years with the company being allowed to recover its carrying costs during the period of amortization. In this case, the parties agree that a thirteen-year amortization would be appropriate. The amount that would be recovered will be determined through the answers to subsequent issues. The net present value comparison required by the statute will be addressed in issue number five.

D) What is the net book value of the retired Asbury plant?

Findings of Fact

64. Liberty's witness, Charlotte Emery, credibly testified that the net book value of the retired Asbury plant is $159,414,474. That number is comprised of a net retired

plant balance of $157,740,873, and $1,673,601 representing the value of two Asbury environmental capital projects that were abandoned when the plant was retired.[88]

65. Staff accepts the net book value amount proposed by Liberty.[89]

66. Public Counsel's witness, John S. Riley, proposed to use a net book value of $155,044,297. He took that number from testimony submitted by a Liberty witness in the company's recent rate case.[90]

67. Liberty's witness testified that the number referenced by Public Counsel represented the company's projection of how much of the Asbury generating plant would be retained compared to the actual net book value of the plant as of January 2020.[91]

68. The net book value of the Asbury plant is a factor in the calculation of the Asbury securitization revenue requirement.[92]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The $159,414,474 net book value of the Asbury plant proposed by Liberty and accepted by Staff is the more reasonable calculation of that value. Public Counsel's reliance on an alternative number drawn from testimony in another case that is not part of the record in this case, is not reliable.

[88] Emery Surrebuttal, Ex. 8, Page 26, Lines 1-13. The environmental capital projects are addressed in issue 3 P of this order.
[89] Ex. 113, Page 2, Line 1.
[90] Riley Rebuttal, Ex. 208, Page 7, Lines 10-13.
[91] Emery Surrebuttal, Ex. 8, Page 25, Lines 14-23.
[92] Ex. 113, Page 2, Line 1.

E) Was it reasonable and prudent for Liberty to retire Asbury?

Findings of Fact

69. Asbury Unit 1 was a coal-fired Babcock & Wilcox cyclone steam generator that was commissioned in 1970. When it began operations, it had a nominal rating of 206 MW and sourced its coal onsite via mine mouth operation. In 1990, the plant was converted to use a blend of low-sulfur Wyoming coal and local bituminous coal[93]

70. A selective catalytic reduction system was installed at Asbury in 2008 to reduce nitrogen oxide emissions at a cost of $33 million.[94] In 2014, the Asbury plant was retrofitted with an AQCS to comply with the federal Mercury Air Toxic Standards and the Cross State Air Pollution Rule.[95]

71. The AQCS included the addition of a circulating dry scrubber to reduce sulfur dioxide emissions, a pulsejet fabric filter to reduce particulate emissions, powder activated carbon injection to control mercury emissions, conversion from forced draft to balanced draft, a new stack, and the upgrade of the steam turbine to increase efficiency. The upgraded steam turbine increased nominal output of the unit to 218 MW.[96]

72. The AQCS cost $141 million in 2014.[97]

73. Asbury was de-designated from the SPP and officially retired in March of 2020.[98]

[93] Landoll Direct, Ex. 13, Page 3, Lines 12-18.
[94] Graves Direct, Ex. 16, Page 6, Lines 8-9.
[95] Landoll Direct, Ex. 13, Page 4, Lines 11-20.
[96] Landoll Direct, Ex. 13, Page 4, Lines 15-20.
[97] Graves Direct, Ex. 16, Page 6, Line 10.
[98] Landoll Direct, Ex. 13, Page 5, Lines 15-17.

74. Both the selective catalytic reduction system and the AQCS were reviewed by the Commission and allowed into Liberty's rate base.[99] Together, these systems account for 73 percent of Liberty's total undepreciated investment in Asbury.[100]

75. Liberty's 2016 Integrated Resource Plan (IRP) study favored continued operation of Asbury until 2035. But, beginning in 2017, studies showed less economic support for continued operation of Asbury. By 2019, Liberty's IRP showed that retirement of Asbury became the less expensive option when compared to continuing to operate the plant.[101] According to that study, retiring Asbury resulted in savings over maintaining Asbury until its end of life, 94 percent of the time, on a probability-weighted basis. Calculated savings ranged from $18 million to $144 million, with an estimated savings of $93 million on a 20-year expected value basis.[102]

76. In 2019, when the decision was made to retire Asbury, Liberty had a winter peak reserve margin of 391 MW, about 35 percent more than is typically needed. That meant that if Asbury were retired, Liberty would still have reserve margins above the reliability requirement throughout the projected 20-year planning window.[103]

77. Power plants are scheduled and dispatched to collectively provide the right amount of power needed across a large area at any instant in time. The market system, operated by SPP, generally dispatches the least costly generating plant to satisfy total load. The result of this process is generally to dispatch the cheapest plants first. Hydro power or renewables such as wind and solar, which have no fuel costs, are often

[99] Graves Direct, Ex. 16, Page 6, Lines 17-18.
[100] Graves Direct, Ex. 16, Pages 6-7, Lines 22, 1-2.
[101] Graves Direct, Ex. 16, Pages 9-10, Lines 9-23, 1-16.
[102] Doll Direct, Ex. 3, Page 16, Lines 15-21.
[103] Graves Direct, Ex. 16, Page 14, Lines 5-14.

dispatched first, followed by nuclear and whichever coal or efficient gas plant is next cheapest. Finally, relatively inefficient, older plants will be dispatched. In a market region like SPP, the marginal costs of the last plant dispatched in any hour sets the market price paid to all the units then operating.[104]

78. Asbury's position on the SPP supply curve grew progressively worse between 2010 and 2019, primarily due to decreasing natural gas prices and declining cost and increasing penetration of renewable generation.[105] In addition, Asbury's marginal cost to operate had become higher than the majority of coal units in SPP. That meant it had become uneconomic for Liberty to run Asbury for much of the time.[106]

79. Before 2016, Liberty had self-committed Asbury to operate as a baseload plant. It did that to meet the obligations of its coal transportation contract, which required Liberty to take minimum delivery quantities. In 2016, Liberty renegotiated its coal transportation contract to remove the minimum delivery requirements. Thereafter, Asbury was dispatched in response to market signals.[107]

80. Self-commitment allowed Asbury to operate more consistently, but it also increased the risk that the unit would operate uneconomically. When a utility self-commits a particular unit, it is telling the market that this unit will run no matter what. That commitment also means that the self-committed unit will be paid at the market rate, not at its actual cost to operate. So, if the market rate is set by a lower-cost unit, such as a renewable resource, the self-committed unit will operate at a loss.[108]

[104] Graves Direct, Ex. 16, Page 17, Footnote 19.
[105] Graves Direct, Ex. 16, Pages 26-27, Lines 15-19, 1-7.
[106] Graves Direct, Ex. 16, Page 27, Lines 8-12.
[107] Rooney Direct, Ex. 11, Page 4, Lines 1-10.
[108] Transcript, Page 175-176, Lines 17-25, 1.

81. By 2015, Asbury was showing negative net operating margins,[109] and Liberty stopped self-committing Asbury in October 2016.[110]

82. After it discontinued self-committing Asbury, the unit's annual capacity factor began to decline as the market selected units with better heat rates, lower fuel costs, shorter start durations, shorter minimum downtimes, and faster ramp rates.[111]

83. Despite efforts to improve its efficiency,[112] by 2019, Asbury's net capacity factor (a measure of how much a unit generates over time compared to how much it could generate if it ran at the top of its net capacity in that time) had dropped to 46.97 percent, compared to 76.42 percent in 2010.[113]

84. Based on heat rate, Asbury was the least efficient coal-fired unit in Liberty's fleet.[114]

85. The market forces that made Asbury's operation increasingly uneconomic also apply to other coal plants in the United States, such that a third of the U.S. coal fleet that was operating in 2012 has now retired.[115]

86. Liberty's 2019 IRP found that retiring Asbury in 2019 and replacing it with a mix of solar and storage would result in savings amounting to $93 million on a 20-year expected value basis.[116]

87. Electric utilities choose resource options because they are expected to have the lowest costs in most, but not all circumstances. A prudent resource plan should be

[109] Doll Direct, Ex. 3, Page 8, Lines 18-13.
[110] Doll Direct, Ex. 3, Page 8, Lines 10-14.
[111] Rooney Direct, Ex. 11, Page 4, Lines 10-13.
[112] Doll Direct, Ex. 3, Page 12, Lines 6-20.
[113] Doll Direct, Ex. 3, Page 11, Table AJD-2 and Lines 3-9.
[114] Rooney Surrebuttal, Ex. 12, Page 2, Lines 19-20. *See also*, Transcript, Page 177, Lines 10-11.
[115] Graves Direct, Ex. 16, Page 29, Lines 11-13.
[116] Graves Direct, Ex. 16, Page 21, Lines 10-18.

understood to be partially exposed to other alternatives that turn out to have lower costs in some, but not the majority of reasonably foreseeable planning scenarios.[117]

88. A utility's level of earnings is subject to periodic review and approval by regulators. If investments made by a utility result in unexpected gains through avoided costs or reduced risks, the utility will not be able to keep the upside profits beyond its next rate case. As a result, it would be unfair to assign downside losses to the utility simply because the investment loses its economic advantages before its costs are fully recovered from ratepayers, even if the particular investment is no longer used and useful.[118]

89. Had Liberty continued to operate Asbury, it was reasonable to anticipate that its customers would have paid more for the plant's increasingly higher costs relative to alternative resources.[119]

90. Had Asbury continued to operate, Liberty would have had to spend an additional $20 million to upgrade its coal ash handling facilities to comply with federal regulations. That additional investment was avoided when Asbury was closed.[120]

91. A study relied upon by Liberty determined that by the time the decision was made to close Asbury, the plant had a $134 million negative valuation, meaning if it were sold, Liberty would have to pay the "buyer" a substantial sum to purchase and operate the facility and assume all associated liabilities.[121]

[117] Graves Direct, Ex. 16, Page 43, Lines 13-21.
[118] Graves Direct, Ex. 16, Pages 45-46, Lines 20-24, 1-3.
[119] Graves Surrebuttal, Ex. 17, Page 13, Lines 18-20.
[120] Landoll Surrebuttal, Ex. 14. Page 8, Lines 5-16.
[121] Landoll Direct, Ex. 13, Page 11, Lines 7-11. The valuation number was described as confidential in Landoll's testimony, but was revealed in Doll Surrebuttal, Ex. 4, Page 5, Lines 13-16.

92. Staff believes the early retirement of Asbury was just, reasonable and in the public interest, and the costs of that retirement should be recovered through securitization.[122]

93. Renew Missouri believes securitizing the unrecovered costs related to the early retirement of Asbury serves the public interest and should be approved.[123]

Conclusions of Law

The Commission's prudence standard was previously described in the Conclusions of Law relating to Winter Storm Uri costs in issue 2(F). That description will not be repeated here.

FF. The Commission's Electric Utility Resource Planning Rule, 20 CSR 4240-22, (the IRP rule), requires Missouri's investor-owned electric utilities, including Liberty, to file triennial reports identifying a preferred resource plan and resource acquisition strategy. The rule also requires the electric utilities to file annual update reports about those plans.

GG. The definition of "Energy Transition Costs" found in Section 393.1700.1(7)(a), RSMo requires that to qualify as such a cost, the retirement or abandonment of the subject electric generating facility must have been deemed reasonable and prudent by the commission through a final order issued by the commission.

HH. The definition of "Energy Transition Costs" found in Section 393.1700.1(7)(a) specifically states that such costs include the "undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating

[122] McMellen Rebuttal, Ex. 100, Page 6, Lines 1-3.
[123] Owen Surrebuttal, Ex. 400, Page 21, Lines 11-13.

facility and any facilities ancillary thereto or used in conjunction therewith …" That means such costs can be recovered through securitization even if a plant was retired or abandoned before its cost was fully depreciated because of an early retirement.

II. Missouri's anti-CWIP statute, Section 393.135, RSMo, does not preclude the Commission from allowing recovery of the cost of abandoned utility property.[124]

Decision

The Commission's prudence standard requires that the prudence of Liberty's decision to close the Asbury plant be judged by asking whether the conduct was reasonable at the time it was made, based on the knowledge available to the decision makers while they were making their decision. A decision does not need to be perfect. Rather, that decision must fall within a range of reasonable decisions.

The facts, as the Commission has found them, demonstrate that Asbury was a fifty-year old coal-fired generating plant that could no longer effectively compete in the electrical generation marketplace. As a result, its continued operation had become uneconomic and a drain on both the company and its ratepayers.

The prudence of Liberty's decision to retire Asbury is challenged only by Public Counsel. Public Counsel argues in broad terms that Liberty deliberately chose to make Asbury uncompetitive in the SPP energy marketplace so that it could justify the building of what it describes as competing wind generation resources in order to pump up the utility's rate base. In addition, Public Counsel, largely relying on hindsight, contends that Liberty imprudently failed to account for the need for reliably dispatched generation in a

[124] *State ex rel. Union Elec. Co. v. Pub. Serv. Com'n*, 687 S.W.2d 162 (Mo. banc. 1985)

Winter Storm Uri type situation. Neither argument is supported by the evidence in the record.

Based on the evidence that is in the record, the Commission deems Liberty's decision to retire Asbury when it did to be reasonable and prudent.

F) What is the value of the Asbury environmental regulatory assets?

Findings of Fact

94. The amount at issue relates to the amounts paid by Liberty for removal of asbestos at Asbury, and costs associated with the operation of ash ponds at Asbury.[125] Liberty recorded them in its books as a regulatory asset as it was ordered to do by the Commission in an earlier rate case. Since these were costs spent by Liberty for environmental activities at the Asbury plant, Staff agrees with Liberty that they be included in the Asbury securitized balance.[126]

95. Public Counsel's witness, John S. Riley, did not oppose recovery of these costs, but expressed concern that this amount is also included in an Asset Retirement Obligation (ARO) related to Coal Combustion Residual impoundment for which Liberty is also seeking recovery.[127]

96. An ARO is an obligation, legal or non-legal, associated with the retirement of a tangible long-lived asset for the cost of returning a piece of property to its original condition. AROs can be recognized either when the asset is placed in service or during its operational life when its removal obligation is incurred.[128]

[125] Emery Surrebuttal, Ex. 8, Page 27, Lines12-14.
[126] Bolin Surrebuttal, Ex. 103, Page 2, Lines 1-20.
[127] Riley Rebuttal, Ex. 208, Pages 9-10, Lines 3-13, 1-9.
[128] Bolin Rebuttal, Ex. 102, Page 9, Lines 8-11.

97. In her surrebuttal testimony, Liberty's witness, Charlotte Emery, explained that the amount at issue is related to the Asbury environmental regulatory asset costs that have been settled and paid by Liberty. The other ARO described by Public Counsel's witness represents additional costs Liberty expects to incur to complete the ARO for the coal ash ponds. The amount at issue will not be included in the other ARO.[129]

98. The amount at issue, updated through May 2022, is $1,643,357.[130]

Conclusions of Law

JJ. The securitization statute, Section 393.1700.2,(3)(c)k allows the Commission to "specify a future rate making process to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the electrical corporation. …"

Decision

The Commission finds it is appropriate to allow Liberty to include the amount of $1,643,357 in its securitized costs for Asbury environmental regulatory assets, as that amount is not also included in another ARO.

G) What is the value of the Asbury fuel inventories? and
Q) Should Liberty's recovery include basemat coal at Asbury?

These are the same issue stated in different ways and the Commission will address them together.

Findings of Fact

99. The coal pile at Asbury, or any other coal-fired generating facility includes a mat upon which the coal is piled. That mat is initially constructed of packed rock and or

[129] Emery Surrebuttal, Ex. 8, Page 28, Lines 12-18.
[130] Ex. 21, Schedule CTE-9 Asbury.

clay. The coal that is piled on the mat will, over the years, compress and mix into the mat as more coal is piled on top of the old coal.[131]

100. Basemat coal is the coal that has become compressed and mixed into the mat. As the utility scrapes the bottom of the pile it gets into the basemat coal/rock/clay mixture and the mixture can no longer be safely burned in the unit.[132]

101. The cost of the coal that mixed into the basemat was incurred while the plant was operational, was necessary to operation of the plant, and its cost would not otherwise be recovered by Liberty.[133]

102. There was no usable coal remaining at Asbury when it retired, but there was $1,924,886 of basemat coal, of which the Missouri jurisdictional portion is $1,532,832.[134] Liberty proposes to include this amount in the securitized costs associated with Asbury.

103. In Liberty's 2019 rate case, just before Asbury closed, the Commission allowed $3,947,465 as coal inventory within the company's rate base, representing a 60-days burn of fuel.[135]

104. In a stipulation and agreement in File No. ER-2020-0311, approved by the Commission on October 7, 2020, the parties agreed to defer the unrecoverable coal to FERC Account 182.3 for future ratemaking consideration.[136]

105. Staff contends Liberty used the proper amount of $1,532,832 as the value of the basemat coal to offset the $3,947,465 coal inventory value within the AAO.[137]

[131] Emery Surrebuttal, Ex. 8, Page 31, Lines 7-18.
[132] Transcript, Vol. 2, Page 110, Lines 1-10.
[133] Emery Surrebuttal, Ex. 8, Page 31,Lines 16-18.
[134] Emery Surrebuttal, Ex. 8, Page 31, Line 1.
[135] Riley Rebuttal, Ex. 208, Pages 11-12, Lines 23-25, 1-2.
[136] McMellen Surrebuttal, Ex. 101, Page 3, Liines 3-7.
[137] McMellen Surrebuttal, Ex. 101, Page 2, Lines 6-7.

Conclusions of Law

KK. Energy transition costs as defined at Section 393.1700.1(7)(a) include "the undepreciated investment in the retired or abandoned … electric generating facility and any facilities ancillary thereto or used in conjunction therewith."

Decision

There was no usable coal supply at Asbury at the commencement of the AAO tracker, but the unusable basemat coal was still there. The basemat coal was acquired by Liberty over the years and was included in the company's rate base along with the rest of its coal pile inventory. It would have recovered the value of that coal as an expense when the coal was burned. But, since the basemat coal was never burned, Liberty never recovered its cost. Consequently, the value of the basemat coal, $1,532,832, falls within the statutory definition of energy transition costs and may be securitized.

H) What are the values of the Accumulated Deferred Income Tax (ADIT) and Excess ADIT?

Findings of Fact
ADIT

106. The amounts calculated for the level of ADIT will vary depending upon the starting point of the calculated Asbury Energy Transition Cost Balance.[138]

107. Staff's witness, Kimberly K. Bolin, who is an accountant and serves as Director of the Financial and Business Analysis Division for the Commission, calculated a net present value of Liberty's ADIT offset of $17,134,363.

108. Bolin credibly explained that Liberty's calculation of the net present value of its ADIT offset effectively and inappropriately discounted the ADIT twice by discounting

[138] Bolin Rebuttal, Ex. 102, Page 10, Lines 16-22.

the yearly amounts related to the remaining balance of ADIT, and then discounting the sum of the yearly amounts again.[139]

109. Public Counsel's witness, John S. Riley, testified that in his "uninformed"[140] opinion the requirements of the securitization statute are not applicable at this time.[141]

110. Until all inputs, including the interest rates that the securitized bonds will carry, are determined, it is not possible to calculate the exact amount of ADIT offset at this time.[142]

Excess ADIT

111. Excess ADIT represents an amount to be returned to customers as established in Liberty's 2019 rate case, ER-2019-0374. That offset should reflect the value established in that case reduced by the customer collections received for that amount while rates established by that case were in effect, a period between September 16, 2020 and June 1, 2022.[143]

112. Staff and Liberty agree that the Excess ADIT offset should be $12,313,459.[144]

113. Public Counsel proposed that the Excess ADIT offset should be $16,934,393, which is the amount established in ER-2019-0374 without any adjustment for amounts collected in the rates established in that rate case. Public Counsel asserts

[139] Bolin Rebuttal, Ex. 102, Page 11, Lines 10-14.
[140] Riley testified that "I see this recalculation as a confiscatory act, but that is my uninformed opinion as I have not sought the advice of counsel regarding what this new law requires or allows". Riley Rebuttal, Ex. 208, Page 13, Lines 6-8.
[141] Riley Rebuttal, Ex. 208, Page 13, Lines 6-10.
[142] Transcript, Vol. 3, Page 236, Lines 4-9.
[143] Bolin Surrebuttal, Ex. 103, Page 4, Lines 15-22.
[144] Bolin Rebuttal, Ex. 102, Page 12, Lines 6-8. See also, Transcript, Vol 3, Page 237, Lines 6-8.

that "[o]nce the plant associated with the deferred taxes is retired, the clock stops on the deferred taxes as well." Public Counsel cites no authority for that statement.[145]

Conclusions of Law

LL. Section 393.1700.2(3)(c)m requires a financing order to include:

> [A] procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned or to be retired or abandoned electric generating facility, or in connection with retired or abandoned facilities included in qualified extraordinary costs. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from rate base in future general rate cases and the net tax benefits relating to amounts that will be recovered through the issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that could otherwise be issued. The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds.

This provision ensures that ADIT and Excess ADIT are excluded from Liberty's ratebase in future general rate cases. Thus, ratepayers no longer benefit from the ADIT and Excess ADIT balance in future rate cases after receiving a credit for those balances in this securitization case.

Decision

The ADIT offset to the Asbury Energy Transition Cost balance is properly calculated using the methodology used by Staff witness Kim Bolin. Public Counsel's witness proposes to simply ignore the requirements of the statute, and the Commission finds his testimony to be not credible.

[145] Riley Rebuttal, Ex. 208, Page 14, Lines 8-12.

The Excess ADIT offset is $12,313,459. Public Counsel's suggestion that the Excess ADIT amount established in ER-2019-0374 should not be adjusted by the amounts collected in the rates established in that case is not supported by the law or the facts.

l) What is the value of the Asbury AAO regulatory liability?

Findings of Fact

114. When Asbury ceased generating power the costs associated with operating it had been included in the rates established in Liberty's 2019 general rate case, ER-2019-0374. The financial impact of the closure was unknown at that time so a stipulation and agreement approved by the Commission listed specific rate elements that were to be tracked by Liberty to reflect the impact of the closure of Asbury, beginning January 1, 2020.[146]

115. The rate components included in the AAO liability are the return on the unrecovered Asbury investment, depreciation expense, all non-fuel/non-labor operating and maintenance expenses, property taxes, and non-labor Asbury retirement/decommissioning costs.[147]

116. The return on the Asbury component of the regulatory liability should be used to offset Liberty's net balance of costs to be securitized. Including that component recognizes that Liberty's customers have been paying a full return on Asbury in rates since the unit was effectively retired in December 2019, and that amount should be returned to customers.[148]

[146] McMellen Rebuttal, Ex. 100, Pages 8-9, Lines 21-23, 1-2.
[147] McMellen Rebuttal, Ex. 100, Page 9, Lines 5-7.
[148] McMellen Rebuttal, Ex. 100, Page 9, Lines 13-20.

117. Public Counsel challenged Liberty's calculation of the amount of property taxes to be included in the AAO regulatory liability. Public Counsel contended three full years of taxes should be included in the calculation, even though recovery from ratepayers for those taxes only occurred for 29 months during the pendency of the rates established in ER-2019-0374.[149] Public Counsel abandoned this position in its initial brief and now accepts the amount of taxes calculated by Liberty.[150]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

This issue is largely a determination of a number to be used to offset a portion of the Asbury related energy transition cost balance to reflect the costs that were recovered from ratepayers after the unit was closed. The number will be impacted by resolution of several other issues addressed in this order. Based on the decisions made regarding those other issues, the value of the Asbury AAO regulatory liability is $78,691,414.

J) What are the likely Asbury decommissioning costs?

Findings of Fact

118. Although Asbury is closed, Liberty is still working to decommission and dismantle the plant.[151]

119. Liberty developed a three-phase plan for final disposition of the Asbury facility. Phase 1 was a study phase, Phase 2 includes development of work plans, schedules, engineering plans and specifications, etc., concluding with bid documents for

[149] Riley Rebuttal, Ex. 208, Pages 18-19, Lines 23-25, 1-2.
[150] The Office of the Public Counsel's Initial Brief, Page 28.
[151] Landoll Direct, Ex. 13, Page 5, Lines 19-20.

the demolition of the selected facilities. Phase 3 is planned to include finalization of bid documents, revision of cost estimates, bid administration, construction management, demolition of the facilities, reporting, and project accounting. Phase 3 is tentatively scheduled to be completed in 2024.[152]

120. Liberty provided estimates of costs for Phase 2 and Phase 3.[153] Those estimates are $4 million for Phase 2 ($3,541,054 Missouri jurisdictional) and $6.4 million in direct costs ($5,665,687 Missouri jurisdictional) for Phase 3.[154]

121. Liberty's cost estimates for Phase 3 do not include a salvage value that Liberty will receive for the demolished assets.[155]

122. Staff proposes to include $4 million for Phase 2 costs, but would partially offset the Phase 3 costs with the salvage value estimated in a study prepared by Black & Veatch.[156]

123. Liberty does not necessarily oppose inclusion of salvage value, but suggests it may be more beneficial to ratepayers to not include the salvage value in the securitization bond amount and instead allow for its recovery in a future rate case.[157]

124. Public Counsel proposed to include $5,665,687 (Missouri jurisdictional) for Phase 3, offset by the salvage value. Or in the alternative, Public Counsel would exclude Phase 3 costs entirely.[158]

[152] Landoll Direct, Ex. 13, Pages. 9-10, Lines 19-24, 1-14.
[153] Landoll Direct, Ex. 13, Page 15, Lines 10-11.
[154] Emery Surrebuttal, Ex. 8, Schedule CTE-2 Asbury.
[155] Bolin Rebuttal, Ex. 102, Page 8, Lines 2-3.
[156] Bolin Rebuttal, Ex. 102, Page 8, Lines 6-7. The number used by Staff is confidential, but it can be found in Black & Veatch's report, which is found at Landoll Direct, Ex. 13, Schedule DWL-2, Page 8 of 9. *See also*, Landoll Surrebuttal, Ex. 14, Page 5, Lines 10-11.
[157] Emery Surrebuttal, Ex. 8, Page 13, Lines 9-18.
[158] The Office of the Public Counsel's Initial Brief, Page 26.

Conclusions of Law

MM. The definition of “energy transition costs” in Section 393.1700.1(7)(a) includes “costs of decommissioning and restoring the site of the electric generating facility.”

NN. Section 393.1700.2(3)(c)k, RSMo, requires that this order provide for a reconciliation process that would require Liberty to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized tariff costs incurred by the utility through a future rate case.

Decision

The numbers associated with this issue are only estimates for inclusion in the securitized costs. The actual costs will be reconciled in a future rate case. There is no disagreement among the parties about inclusion of the estimated decommissioning costs for Phase 2. The only disagreement about Phase 3 decommissioning costs is whether to partially offset those anticipated costs with anticipated salvage proceeds. The Commission finds that it is appropriate to offset the estimated decommissioning costs with the anticipated salvage proceeds rather than waiting to credit those proceeds to ratepayers in a future rate case. If not offset, the Commission would be asking ratepayers to pay now for money Liberty may not spend for several years, but would be making them wait until a future rate case to have the salvage proceeds credited to them.

K) What are the likely Asbury retirement obligations?

Findings of Fact

125. An Asset Retirement Obligation (ARO) is an obligation, legal or non-legal, associated with the retirement of a tangible long-lived asset for the cost of returning a

piece of property to its original condition. AROs can be recognized either when the asset is placed in service or during its operational life when its removal obligation is incurred.[159]

126. Liberty included AROs in the total amount of $21,282,684 (Missouri jurisdictional) for asbestos removal and coal combustion residuals impoundment in its proposed securitization balance for the retirement of Asbury.[160]

127. Staff initially opposed inclusion of either the asbestos or the coal combustion residuals ARO in the securitization balance. However, after reviewing the surrebuttal testimony of Liberty, Staff agreed that Liberty should be allowed to include an ARO for the coal combustion residuals in the amount of $16,995,561.[161]

128. The AROs are estimates of future costs. Any variance from actual costs incurred will be tracked by Liberty and reconciled in a future rate case.[162]

129. Inclusion of the AROs in the securitization balance will benefit ratepayers in that if Liberty recovered these costs through traditional ratemaking it would also recover carrying costs until the time of recovery.[163]

Conclusions of Law

The conclusions of law for this issue are the same as for issue 3J and will not be repeated.

Decision

Staff and Public Counsel continue to oppose inclusion of the ARO for asbestos removal, arguing that the amount of the ARO has not been properly documented.

[159] Bolin Rebuttal, Ex. 102, Page 9, Lines 8-11.
[160] Emery Surrebuttal, Ex. 8, Schedule CTE-2 Asbury.
[161] Transcript, Vol. 3, Page 231, Lines 17-21.
[162] Emery Surrebuttal, Ex. 8, Pages 12-13, Lines 23-24, 1-4.
[163] Emery Surrebuttal, Ex. 8, Page 12, Lines 9-16.

However, the estimates and the actual costs incurred will be reconciled, and allowing Liberty to recover these costs through securitization will reduce the amount that would be paid by ratepayers if they are not securitized. The Commission will allow Liberty to include AROs totaling $21,282,684 within its securitization balance.

L) What is the appropriate amount for Cash Working Capital?

Findings of Fact

130. The Commission's order in Liberty's 2019 rate case that established an AAO directed Liberty to track the monthly impact of Asbury's retirement on cash working capital.[164]

131. Since Liberty did not have an authorized cash working capital amount specific to Asbury, it made a reasonable estimate by taking the Asbury baseline revenue requirement amounts and determining what percentage it was of the total base rate revenue requirement amount authorized in that prior rate case. Liberty then applied that percentage to the total amount of cash working capital approved in that rate case to determine the amount of cash working capital in base rates that was associated with Asbury.[165]

132. Public Counsel's witness, John S. Riley, calculated a cash working capital amount by making multiple assumptions and adjustment to calculate a new cash working capital value for the retired Asbury plant.[166]

[164] Emery Surrebuttal, Ex. 8, Pages 29-30, Lines 24, 1-2.
[165] Emery Surrebuttal, Ex. 8, Page 30, Lines 2-9.
[166] Riley Rebuttal, Ex. 208, Page 8, Lines 1-20.

133. Public Counsel's calculation of cash working capital is inappropriate in that it does not factor in what Liberty's customers were actually paying for cash working capital related to Asbury during the period covered by the AAO.[167]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The AAO that directed Liberty to track the costs associated with the retirement of Asbury was intended to allow future rate adjustments to compensate ratepayers for costs included in rates to pay for operation of the closed Asbury plant. For that reason, the calculation of the cash working capital associated with Asbury must take into account the actual amounts paid by ratepayers and should not be an attempt to recalculate a hypothetical cash working capital amount for the closed plant as was performed by Public Counsel's witness. The Commission finds that the amount of cash working capital calculated by Liberty and accepted by Staff is appropriate.

M) Should Liberty's recovery reflect a disallowance of the remaining cost of the Air Quality Control System (ACQS), and if so, how much?

Findings of Fact

134. A selective catalytic reduction system was installed at Asbury in 2008 to reduce nitrogen oxide emissions at a cost of $33 million.[168] In 2014, the Asbury plant was retrofitted with an AQCS to comply with the federal Mercury Air Toxic Standards and the Cross State Air Pollution Rule.[169]

[167] Emery Surrebuttal, Ex. 8, Page 30, Lines 9-11.
[168] Graves Direct, Ex. 16, Page 6, Lines 8-9.
[169] Landoll Direct, Ex. 13, Page 4, Lines 11-20.

135. The AQCS included the addition of a circulating dry scrubber to reduce sulfur dioxide emissions, a pulsejet fabric filter to reduce particulate emissions, powder activated carbon injection to control mercury emissions, conversion from forced draft to balanced draft, a new stack, and the upgrade of the steam turbine to increase efficiency. The upgraded steam turbine increased nominal output of the unit to 218 MW.[170]

136. The AQCS cost $141 million in 2014.[171]

137. Asbury was de-designated from the SPP and officially retired in March of 2020.[172]

138. Both the selective catalytic reduction system and the AQCS were reviewed by the Commission and allowed into Liberty's rate base.[173] Together, these systems account for 73 percent of Liberty's total undepreciated investment in Asbury.[174]

139. Public Counsel did not challenge the prudence of Liberty's decision to invest in the AQCS and other environmental upgrades at the time and does not challenge the prudence of that decision now.[175]

140. Public Counsel challenges Liberty's recovery of the costs of the AQCS on principles of "used and useful", matters of equity and fairness, and because the retirement was entirely the result of actions taken by Liberty's management from the excess capacity it momentarily created.[176]

[170] Landoll Direct, Ex. 13, Page 4, Lines 15-20.
[171] Graves Direct, Ex. 16, Page 6, Line 10.
[172] Landoll Direct, Ex. 13, Page 5, Lines 15-17.
[173] Graves Direct, Ex. 16, Page 6, Lines 17-18.
[174] Graves Direct, Ex. 16, Pages 6-7, Lines 22, 1-2.
[175] Marke Rebuttal, Ex. 204, Page 8, Lines 8-10.
[176] Marke Rebuttal, Ex. 204, Page 45, Lines 14-18.

Conclusions of Law

OO. The definition of "Energy Transition Costs" found in Section 393.1700.1(7)(a) specifically states that such costs include the "undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith …" That means such costs can be recovered through securitization even if a plant was retired or abandoned before its cost was fully depreciated because of an early retirement.

Decision

The Commission has previously determined that Liberty's decision to retire Asbury was prudent (see issue 3E). This issue is just a statement of the means by which Public Counsel asks the Commission to remedy the alleged imprudence of the decision to retire Asbury. As such, there is no need for the Commission to revisit that decision. Consistent with its decision in issue 3E, the Commission will not disallow the remaining cost of the AQCS.

N) Should Liberty's recovery reflect a disallowance for income tax deductions for Asbury abandonment?

Findings of Fact

141. Public Counsel asserts that Liberty has enjoyed a tax benefit because it wrote-off Asbury in 2020 and the last three months of 2019. Public Counsel asserts this is a benefit directly associated with the retirement of Asbury and should be included in the AAO totals established to track the costs associated with that retirement. Public Counsel calculated a tax benefit of $16.5 million, which it applied to the AAO liability.[177]

[177] Riley Rebuttal, Ex. 208, Page 19, Lines 7-16.

142. This tax benefit is a normal timing item that is treated the same as any ADIT item in rates. A regulatory asset was established for the net book value of Asbury. This regulatory asset has deferred taxes associated with it. As this regulatory asset gets amortized, the amortization expense is added back for taxable income purposes with no corresponding tax deduction because Asbury qualified as an abandonment for tax purposes already.[178]

Conclusions of Law

PP. Section 393.1700.2(3)(c)m requires a financing order to include:

> [A] procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned or to be retired or abandoned electric generating facility, or in connection with retired or abandoned facilities included in qualified extraordinary costs. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from rate base in future general rate cases and the net tax benefits relating to amounts that will be recovered through the issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that could otherwise be issued. The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitized utility tariff bonds.

Decision

Public Counsel's proposed disallowance for income tax deductions for Asbury abandonment is unnecessary and will not be imposed.

[178] Emery Surrebuttal, Ex. 8, Page 37, Lines 1-12.

O) Should Liberty's recovery reflect a disallowance for labor at Asbury?

Findings of Fact

143. In the 2019 rate case, ratepayers funded labor expenses at Asbury that were not incurred after the plant was closed. That expense was tracked in the AAO and Public Counsel argues those costs should be included in the amount of the AAO offset to securitized costs.[179] Public Counsel calculated the amount of the proposed disallowance as $6,988,710.[180]

144. All Asbury employees were retained and were either transferred to other departments within the company or stayed at Asbury to work on the decommissioning.[181] These employees filled positions elsewhere at Liberty that were needed to provide safe and adequate service to ratepayers.[182]

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The labor costs identified by Public Counsel were not spent to provide service to ratepayers at an operating Asbury plant. But those costs were still used to provide service to those ratepayers through other operations of Liberty. Public Counsel's proposed disallowance for labor at Asbury is unnecessary and will not be imposed.

[179] Riley Rebuttal, Ex. 208, Page 18, Lines 7-14.
[180] Riley Surrebuttal, Ex. 209, Schedule JSR-S-01, Page 2.
[181] Emery Surrebuttal, Ex. 8, Page 36, Lines 6-8.
[182] McMellen Surrebuttal, Ex. 101, Page 4, Lines 2-5.

P) Should Liberty's recovery include amounts for abandoned environmental capital projects?

Findings of Fact

145. In addition to the net retired plant balance for the Asbury plant, Liberty included in its proposed securitization balance the amount of $1,673,601 in costs related to two Asbury environmental projects that were abandoned when the plant was closed. These costs were included in both construction work in progress (CWIP) and removal work in progress (RWIP) accounts.[183]

146. Public Counsel's witness, John S. Riley, contends these amounts are CWIP that was abandoned and should be excluded from Liberty's recovery by authority of Section 393.135, RSMo.[184]

Conclusions of Law

QQ. Section 393.135, RSMo, 2016 states:

> Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

RR. The Missouri Supreme Court has held that Section 393.135, RSMo, 2016 does not "have the purpose, and does not have the effect, of divesting the Commission of the authority to make any allowance at all on account of construction which is definitely **abandoned**.[185]

[183] Emery Surrebuttal, Ex. 8, Page 26, Lines 3-6.
[184] Riley Rebuttal, Ex. 208, Page 6, Lines 5-10.
[185] *State ex rel. Union Elec. Co. v. Pub. Serv. Com'n*, 687 S.W.2d 162, 168 (Mo. banc 1985). (emphasis in original).

SS. The Missouri Court of Appeals has held that "the utility property upon which a rate of return can be earned must be utilized to provide service to customers. That is, it must be used and useful."[186]

TT. The fact that a cost item is no longer used and useful does not prevent a utility from recovering the cost of that item so long as it is not seeking to earn a return on that investment.[187]

UU. Energy transition costs as defined at Section 393.1700.1(7)(a) include "the undepreciated investment in the retired or abandoned … electric generating facility and any facilities ancillary thereto or used in conjunction therewith."

Decision

The cost of the abandoned environmental projects at Asbury meet the definition of energy transition costs as defined by the securitization statute. As such those costs may be recovered through securitization. However, those costs would not be includible in Liberty's ratebase and thus it may not recover a return on those investments

Q) Should Liberty's recovery include basemat coal at Asbury?

This issue was previously considered and resolved along with issue 3G.

[186] *State ex rel. Union Elec. Co. v. Pub. Serv. Com's of State of Mo.* 765 S.W.2d 618, 622 (Mo. App. W.D. 1988.
[187] *State ex rel. Missouri Office of Pub. Counsel v. Pub. Serv. Com'n*, 293 S.W.3d 63 (Mo. App. S.D. 2009_

R) Should Liberty's recovery include non-labor Asbury retirement costs?

Findings of Fact

147. Liberty and Staff included $3,936,502 in the AAO balance as non-labor Asbury Retirement Decommissioning Costs. Liberty was ordered to track those costs in Liberty's 2019 rate case, ER-2019-0374.[188]

148. Public Counsel did not challenge the number, but offered an opinion that the costs should not be included in the final AAO calculation, but should instead be addressed in Liberty's next general rate case.[189]

Conclusions of Law

VV. The definition of "energy transition costs" in Section 393.1700.1(7)(a) includes "costs of decommissioning and restoring the site of the electric generating facility."

Decision

The non-labor Asbury retirement costs fall within the statutory definition of energy transition costs that may be recovered through securitization. Other than a bare statement, Public Counsel has not offered any explanation of why they should not be recovered in that manner. The Commission will allow these costs to be recovered through securitization.

S) What is the amount of depreciation expense?

Findings of Fact

149. In Liberty's 2019 rate case, ER-2019-0374, the Commission ordered Liberty to establish an AAO to track costs associated with the recently closed Asbury plant.

[188] Emery Surrebuttal, Ex. 8, Page 36, Lines 18-23.
[189] Riley Surrebuttal, Ex, 209, Page 6, Lines 9-13.

Among the items to be tracked was accumulated depreciation, starting January 1, 2020.[190]

150. Staff calculated accumulated depreciation for that period as ($24,349,929.)[191]

151. Liberty calculated the amount of depreciation expense to be included in the Asbury regulatory liability to be ($23,480,289).[192]

152. Asbury's last day of generating power was December 12, 2019, when its coal supply was exhausted.[193]

153. Asbury was officially retired on March 1, 2020, after Liberty notified SPP of the planned retirement.[194]

154. Staff included January and February 2020 Asbury costs and benefits in its calculations of the Asbury AAO asset and liability.[195]

155. Public Counsel calculated depreciation using Staff's depreciation rates from Liberty's 2019 rate case of $11,179,375 per year, less the remaining plant expense established in the 2021 case of $314,035 per year. The result is $10,865,340 per year. Taking the monthly average and extending it out for 30 months provides a total depreciation expense for the AAO period of $27,163,350.[196]

156. Public Counsel's calculation improperly utilizes the remaining plant balance established in the 2021 rate case, which does not represent the amount embedded in the

[190] Emery Direct, Ex 7, Page 6, Lines 6-24.
[191] Ex. 113, Page 3, Line 14, Column f and Ex. 116, Page 2, Line 14.
[192] Emery Surrebuttal, Ex. 8, Page 36, Lines 9-16. Ex 21, Schedule CTE-6
[193] Mantle Rebuttal, Ex. 200, Page 19, Footnote 13.
[194] Doll Surrebuttal, Ex. 4, Page 4, Lines 19-22.
[195] McMellen Rebuttal, Ex, 100, Page 6, Lines 13-14.
[196] Riley Rebuttal, Ex. 208, Pages 17-18, Lines 22-24-1-2.

rates established in the 2019 rate case that were the basis for the AAO.[197] In addition, the period of the AAO was from January 1, 2020 through May 2022, a period of 29, not 30 months.

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission finds that Asbury was effectively retired in December 2019, when it ceased producing electricity. Therefore, Staff's calculation of depreciation, which includes the months of January and February 2020, is appropriate and is adopted.

T) What are the appropriate carrying costs for Asbury?

U) What is the appropriate rate(s) of return that should be used to calculate the amount of recovery?

These two issues are closely related and will be addressed together.

Findings of Fact

157. Liberty proposes to include within the energy transition costs to be recovered through securitization carrying charges based on its WACC, which the Commission set at 6.77 percent in Liberty's 2019 rate case, File No. ER-2019-0374.[198] Liberty contends those carrying charges should be recovered for the period after the property was retired through the issuance of the securitized bonds.[199]

158. Staff agrees that Liberty should be allowed to recovery carrying costs, but contends recovery at Liberty's long-term debt rate of 4.65 percent is more appropriate for

[197] Emery Surrebuttal, Ex. 8, Page 36, Lines 13-16.
[198] Emery Direct, Page 15, lines 11-13.
[199] Emery Surrebuttal, Page 20, Lines 17-19.

the relatively short period of time the carrying costs would be applied. Staff proposes that the carrying costs be allowed only beginning in May 2022 until the issuance of the securitized bonds.[200]

159. Public Counsel proposes that Liberty should not be allowed any carrying costs on Asbury undepreciated assets.[201]

Conclusions of Law

WW. The definition of "energy transition costs" found in Section 393.1700.1(7)(a) RSMo, includes "accrued carrying charges" as a cost that may be recovered.

XX. Section 393.1700.2(3)(c)a RSMo, requires that a financing order issued by the Commission include a finding that recovery of securitized utility tariff costs to be financed using securitized utility tariff bonds is "just and reasonable".

YY. In a 1988 case, the Missouri Court of Appeals upheld a Commission decision to deny rate recovery of $106.3 million for cancellation costs related to the abandoned Callaway II nuclear plant. The Commission had found that such cancellation costs were not a just and reasonable expense to be placed in rates and charged to ratepayers. In upholding the Commission's decision, the Court of Appeals held that "the utility property upon which a rate of return can be earned must be utilized to provide service to customers. That is, it must be used and useful."[202]

Decision

There are three issues to be resolved. The first is whether Liberty should be allowed to include any carrying costs within its securitization. The second is the rate of

[200] McMellen Rebuttal, Ex. 100, Page 8, Lines 1-3.
[201] Murray Rebuttal, Ex. 206, Page 9, Lines 1-11.
[202] *State ex rel. Union Elec. Co. v. Pub. Serv. Com's of State of Mo.* 765 S.W.2d 618, 622 (Mo. App. W.D. 1988.

return that should be applied to any allowed carrying costs. The third is a determination of the period for which carrying costs will be recovered through the securitization.

As the Commission has concluded above, Missouri law generally holds that for a utility to be able to recover a return on a property, that property must be used and useful. However, the securitization statute specifically includes carrying costs within the definition of energy transition costs that can be recovered through securitization. Nevertheless, nothing is the statute defines carrying costs or mandates that they be included for recovery through securitization. Further, the securitization statute also requires the Commission find that the amount to be securitized is just and reasonable.

Here, Liberty is seeking to recover its full carrying costs on a generation facility that has not been used and useful since its effective retirement in December 2019. The Commission finds that such full recovery is not just and reasonable. Under these circumstances a more limited recovery of carrying costs for the period after the Asbury plant was removed from Liberty's rates, beginning in June 2022 is just and reasonable.

For the same reason, the Commission finds it just and reasonable to allow Liberty to recover those carrying costs at its 4.65 percent cost of long-term debt rather than at is WACC.

V) What is the appropriate discount rate to use to calculate the net present value of Asbury costs that would be recovered through traditional ratemaking?

Findings of Fact

160. Liberty uses its WACC of 6.77 percent to calculate the net present value of Asbury cost that would be recovered through traditional rate making.[203]

[203] Emery Direct, Ex. 7, Page 20, Lines 1-9.

161. Staff concurred in the use of Liberty's WACC of 6.77 percent to make that comparison.[204]

162. Public Counsel argues the comparison should be made using a discount rate based on the bond rate on the securitized bonds. This comparison would show little value to the securitization.[205]

Conclusions of Law

ZZ. Section 393.1700.2(1)(f) requires an applicant for authority to securitize energy transition costs to include in their application:

> A comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become securitized utility tariff costs from customers. This comparison should demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers.

Liberty fulfilled this legal requirement and its net present value comparison showed a benefit to customers of approximately $48.3 million.[206]

AAA. Section 393.1700.2(2)(e) imposes a similar requirement on an applicant for authority to securitize qualified extraordinary costs. Liberty fulfilled this legal requirement and its net present value comparison showed a benefit to customers of approximately $65.6 million.[207]

BBB. Section 393.1700.2(3)(c)b requires that this order include:

> A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide

[204] Davis Rebuttal, Ex. 107, Page 5, Lines 4-7.
[205] Murray Rebuttal, Ex. 206, Page 15, Lines 1-14.
[206] Emery Direct, Ex 7, Page 20, Line 8.
[207] Hall Direct, Ex. 6, Page 10, Lines 6-7.

> quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. …

Decision

The purpose of the net present value comparison required by the statute is to estimate what, if any, savings will be delivered to customers if the securitization proceeds. To accomplish that purpose a reasonable discount rate should be used in the net present value calculation of the estimated costs for traditional financing absent securitization. Public Counsel's suggested discount rate would not result in a reasonable comparison and is rejected. The WACC of 6.77 percent suggested by Liberty and Staff is appropriate and is adopted.

4) What are the estimated upfront and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri and the energy transition costs associated with Asbury?

Findings of Fact

163. Liberty estimates that the upfront financing cost associated with securitizing the Winter Storm Uri costs is $3,655,297, excluding the cost of the Commission's consultants. Liberty estimated the ongoing financing costs to be $410,850 per year, or $34,237 per month.[208]

164. Liberty estimates that the upfront financing costs associated with securitizing the Asbury costs is $3,264,961, excluding the cost of the Commission's consultants. The ongoing financing costs for Asbury were estimated to be $343,039 per year, or $28,587 per month.[209]

[208] Emery Surrebuttal, Ex. 8, Schedule CTE-1 Storm Uri.
[209] Emery Surrebuttal, Ex. 8, Schedule CTE-1 Asbury.

165. Liberty is seeking to securitize only the upfront financing costs, not the ongoing financing costs.[210]

166. It is customary to include upfront financing costs in the principal amount of securitized utility tariff bonds.[211]

167. Upfront and ongoing financing costs of securitization are comprised of a mix of costs that are fixed and less dependent on deal size and costs that are variable and tied to the size of the deal.[212]

168. Considering that the Commission has ordered lower securitization amounts and will be issuing a single, combined financing order, the upfront financing costs should be somewhat lower than originally estimated by Liberty. Liberty estimates that upfront financing cost associated with consolidating the securitization of Asbury and Winter Storm Uri costs range from $5.4 million to $5.6 million, excluding the cost of the Commission's consultants.[213]

169. Staff estimates that the costs of its consultants are approximately $2.3 million.[214]

170. Combined, Staff estimates total upfront financing costs of approximately $6.2 million, plus approximately $37,000 per month in on-going financing costs.[215]

[210] Emery Surrebuttal, Ex 8, Schedule CTE-2
[211] Davis Rebuttal, Ex. 107, Page 6, Lines 6-8.
[212] Davis Rebuttal, Ex 107, Page 6, Lines 11-13.
[213] Ex. 24.
[214] Ex. 113.
[215] Davis Rebuttal, Ex 107, Schedule MD-1.

Conclusions of Law

CCC. Section 393.1700.2(3)(c)a RSMo, requires the Commission to include in its securitization order a description and estimate of the amount of financing costs that may be recovered through securitized utility tariff charges.

DDD. Section 393.1700.2(3)(c)e RSMo, requires the Commission to include in its securitization order:

> A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the securitized utility tariff charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of securitized utility tariff bonds and financing costs and other required amounts and charges payable under the securitized utility tariff bonds.

EEE. A list of items meeting the definition of "Financing Costs" is found at Section 393.1700.1(8) RSMo.

FFF. Section 393.1700.1(16) RSMo includes "financing costs" as items that may be included in a "securitized utility tariff charge." Subsection 393.1700.1(16)(f) authorizes the Commission to employ financial advisors and legal counsel to assist it in processing a financing application and to include the associated costs as financing costs.

Decision

As previously concluded, the securitization statute requires only an estimate of financing costs. The final financing costs will not be known until the bonds are issued. The Commission will use Liberty's estimate that reflects the benefits of consolidation in the amount of $5.6 million for upfront financing costs plus Staff's estimate of the upfront financing costs associated with their consultant in the amount of $2.3 million for a total of

$7.9 million in estimated upfront financing costs. The Commission will use approximately $37,000 per month in ongoing financing costs.

5) Would issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds?

Findings of Fact

171. In its direct testimony, filed along with its application, Liberty calculated a benefit to customers from securitizing energy transition costs amounting to approximately $48.3 million.[216]

172. In its direct testimony, filed along with its application, Liberty calculated a benefit to customers from securitizing qualified extraordinary costs amounting to approximately $65.6 million.[217]

173. Staff concurred that in most of the scenarios it analyzed, customers will benefit from securitizing energy transition costs and qualified extraordinary costs, including benefits from consolidating securitization of those costs in a single bond offering.[218]

Conclusions of Law

GGG. Section 393.1700.2(3)(c)b requires that this order include:

> A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. …

[216] Emery Direct, Ex. 7, Page 20, Line 8.
[217] Hall Direct, Ex. 6, Page 10, Lines 6-7.
[218] Ex. 118.

The statute does not require the order to include a quantification of the amount of savings. Rather, it simply requires a finding that there will be expected savings.

Decision

Based on the calculations prepared by Liberty and Staff, the Commission finds that the proposed issuance of securitized utility tariff bonds are expected to provide quantifiable net present value benefits to customers has compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. This conclusion remains true despite the Commission's decisions to use inputs that differ from those proposed by the parties, as demonstrated in the multiple scenarios described by Staff.

A) What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri and Asbury through securitization?

Findings of Fact

174. The bond markets are continuing to change and as a result, the actual bond rates are not yet knowable and will likely change between now and when the bonds are issued. By the time of the hearing in June 2022, the expected weighted bond interest rate, which was 2.47 percent in January 2022, had risen to 4.28 percent.[219]

175. Staff suggests the discount rate for Winter Storm Uri costs should also be evaluated based on the short-term or long-term cost of debt, and the discount rate for Asbury should be evaluated based on the authorized WACC of 6.77 percent, resulting in a weighted blended interest rate of 5.16 percent.[220]

[219] Transcript, Vol. 7, Pages 525-526, Lines 23-25, 1-21.
[220] Ex. 118.

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission finds that the weighted blended interest rate of 5.16 percent proposed by Staff is appropriate.

6) Regarding any designated staff representatives who may be advised by a financial advisor or advisors, what provision or procedures should the Commission order to implement the requirements of Section 393.1700.2(3)(h)?

7) What other conditions, if any, are appropriate and not inconsistent with Section 393.1700, RSMo (Supp. 2021), to be included in the financing order?

Findings of Fact

176. Many details about the securitization bonds are not yet known and will not be known until the bonds are ready to be issued. The Commission needs to ensure that the securitization will likely provide quantifiable net present value to the benefit of the utility's customers. As a result, review and input from the Commission's Staff of the details of the securitization, as well as their collaboration with Liberty, is essential.[221]

177. The securitization statute does allow the Commission to reject the securitization by disapproving the issuance advice letter just before the bonds are issued, but that would be a drastic action with material capital market implications. Thus, there is a need for Staff to be able to be involved in the process and to regularly update the Commission and transmit feedback as necessary.[222]

178. Staff's involvement in the structuring, marketing, and pricing phase on behalf of the Commission is important because the bond underwriters will not have any

[221] Davis Rebuttal, Ex. 107, Pages 7-8, Lines 18-22, 1-2.
[222] Davis Rebuttal, Ex. 107, Page 8, Lines 4-9.

fiduciary responsibility to protect the interests of customers.[223] Similarly, the interests of the utility and the interests of the customers may not entirely align during the structuring, marketing, and pricing phase. As a result, it is important that the Commission have a seat at the table so it can protect customer's interests.[224]

179. The Commission must also be concerned about allowing the bond placement process to proceed without undue interference. The bond placing process must be quick moving and efficient to meet market expectations, so that potential investors do not choose to opt out of the process.[225] In some situations, a decision will have to be made in a matter of minutes.[226]

180. In its proposed draft financing order, Staff included language creating what it termed a Finance Team, which would consist of one or more designated Staff representatives, financial advisors, and outside bond counsel. As proposed by Staff, such a Finance Team would be given authority to "review and approve" the securitized bonds and associated transactions. Further, the Finance Team would be allowed to "attend all meetings and participate in all calls, e-mails, and other communications relating to the structuring and pricing and issuance of the securitized utility tariff bonds."[227]

181. Liberty's witness, Goldman Sachs Managing Director and possible underwriter for the bonds, Katrina T. Niehaus, testified that she would be willing to work with a bond advisory team if directed to do so by the Commission.[228] She further testified

[223] Transcript, Vol. 7, Page 536, Lines 17-20.
[224] Transcript, Vol. 7, Pages 595-596, Lines 14-25, 1-12.
[225] Transcript, Vol. 7, Page 558-559, Lines 21-25, 1-7.
[226] Transcript, Vol. 7, Page 569, Lines 16-24.
[227] Draft Financing Order, Pages 7-8.
[228] Transcript, Vol. 7, Page 553, Lines 9-24.

that she has worked with similar teams in the past and found them to be an effective way to alleviate concerns raised by staff or their financial advisors and to help them provide guidance to their commission.[229]

182. Liberty's witness, Michael Mosindy, pointed to one area of communications to which a Finance Team would not be able to participate. Communications with rating agencies are tightly controlled to comply with SEC rules. For that reason, communication with the ratings agencies will generally be limited to one person from Liberty and a representative from the lead underwriter.[230] Staff's witness, Mark Davis, confirmed that practice[231] and indicated in that circumstance, Staff would receive access to the recorded calls.[232]

183. The applicable statutory provisions are designed to permit the bonds to be issued with triple-A ratings, using features generally consistent with precedent legislation enabling securitization of this type.[233]

Conclusions of Law

HHH. Section 393.1700.2(3)(h) RSMo, provides that before securitization bonds are issued, the electrical corporation is required to provide an "issuance advice letter" to the Commission describing the final terms of the bonds. The Commission is allowed only until noon on the fourth business day after it receives the issuance advice letter to issue a disapproval letter directing that the bond issuance as proposed should not proceed.

[229] Transcript, Vol. 7, Page 562, Lines 12-25.
[230] Mosindy Surrebuttal, Ex. 15, Page 7, Lines 7-13.
[231] Transcript, Vol. 7, Page 596, Lines 13-20.
[232] Transcript, Vol. 7, Pages 592-593, Lines 23-25, 1-9.
[233] Niehaus Direct, Ex. 18, Page 9, Lines 14-16.

III. So that the Commission will have sufficient insight into the bond placing process to be able to evaluate the issuance advice letter in the short amount of time allowed, Section 393.1700.2(3)(h) RSMo, gives the Commission authority to:

> designate a representative or representatives from commission staff, who may be advised by a financial advisor or advisors contracted with the commission, to provide input to the electrical corporation and collaborate with the electrical corporation in all facets of the process undertaken by the electrical corporation to place the securitized utility tariff bonds to market so the commission's representative or representatives can provide the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis.

JJJ. Section 393.1700.2(3)(h) also expressly limits the authority of the Commission's representative or representatives, stating:

> Neither the designated representative or representatives from the commission's staff nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market although they shall be permitted to attend all meetings convened by the electrical corporation to address placement of the bonds to market.

KKK. Importantly, Section 393.1700.2(3)(h) also allows the Commission to include provisions in the financing order "relating to the issuance advice letter process as the commission considers appropriate and as are not inconsistent with this section."

LLL. Section 393.1700.2(3)(a)b contemplates that the Commission may issue a financing order approving the petition "subject to conditions."

MMM. Section 393.1700.2(3)(c)c requires a financing order to include:

> A finding that the proposed structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order.

Decision

The Commission is faced with the challenge of balancing the need to be informed and involved with the bond placement process with the need to allow that process to proceed without undue delay or interference. The Commission finds that the concept of a Finance Team as described by Staff as including one or more designated Staff representatives, financial advisors, and outside counsel, is appropriate and within the bounds set by the securitization statute. However, while that team should be allowed to be involved in the process, it does not have authority to "approve" that process. Under the statute, the Finance Team can be given authority to review the process, provide input about the process, collaborate in the process, and report its findings and concerns about the process to the Commission. It is then up to the Commission to approve or disapprove the bond issuance through the statutory bond issuance letter process.

Similarly, a requirement that the Finance Team be allowed to attend and participate in all meetings and other communications is problematic. One example, communications with ratings agencies, was described by Liberty, and there could be other examples as well. Fundamentally, a requirement that the Finance Team be allowed to participate in every communication would be unwieldy and could lead to delays that would hamper the bond placement process.

The Commission will create a Finance Team as proposed by Staff, but will limit the authority granted to that team as described below.

To ensure, as required by Sections 393.1700.2(3)(c)c and 393.1700.2(3)(h), that the structuring and pricing ofthe securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff bond charges consistent with market conditions

and the terms of this Financing Order, the Commission designates a Finance Team consisting of designated Commission Staff representatives, financial advisors, and outside counsel to review, provide input, and collaborate on marketing and pricing of the securitized utility tariff bonds and the associated transaction documents. Any costs incurred by the Finance Team in connection with its review of the securitized utility tariff bonds shall be treated as financing costs. The Finance Team shall provide oversight over and input to the structuring and pricing of the securitized utility tariff bond transaction and review the material terms of the transaction to ensure the transaction provides quantifiable net present value benefits to customers compared to the use of traditional ratemaking and results in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced.

The Finance Team shall have the right to review, provide input, and collaborate on all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the size, selection process, participants, allocations and economics of the underwriter and any other member of the syndicate group; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Liberty and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond maturities; (8) reporting templates; (9) the amount of any equity contributions; (10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The foregoing and other items may be reviewed during the entire course of the Finance Team's process. The pre-issuance review process will help ensure that the securitized

utility tariff bonds will be issued with material terms that meet the requirements of the Securitization Law. The Finance Team's review shall continue until the issuance advice letter is disapproved, approved, or takes effect by operation of law.

For the Commission to remain informed and updated throughout the pre-issuance review process, the Commission may require status meetings or phone conferences for the Finance Team and involved parties to communicate and update the Commission on the information being reviewed and prepared in the structuring and pricing process. The Commission may request access to the actual documents and information being reviewed by the Finance Team as needed. The Finance Team may submit written status reports to the Commission as the Finance Team deems appropriate or as requested by the Commission. If concerns arise during the process, such status meetings, conferences or updates can be requested by the Finance Team or other involved parties as needed.

No member of the Finance Team has authority to direct how Liberty places the securitized utility tariff bonds to market although they shall be permitted to attend all meetings convened by Liberty, and participate in all non-privileged calls, e-mails, and other communications relating to the structuring, pricing and issuance of the securitized utility tariff bonds, or be subsequently informed of the substance of those communications.

In connection with the submission of the issuance advice letter, Liberty and the lead underwriters for the securitized utility tariff bonds shall provide a written certificate to the Commission certifying, and setting forth all calculations and assumptions used to support such calculations and certificate, that the issuance of the securitized utility tariff bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal

requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. Such certificates shall be a condition precedent to the submission of the issuance advice letter to the Commission.

In addition, the securitized tariff bonds issued in compliance with this Financing Order shall have a triple-A rating from at least two of the nationally recognized rating agencies.

8) How should securitized utility tariff charges be initially allocated among retail customer classes?

Findings of Fact

184. Based on the class revenue targets Liberty proposed in its most recent general rate case, it calculated the percentage of the company's total revenue requirement that would be contributed by each of Liberty's then existing rate classes and used the result to determine how much of the cost of the securitization bonds should be recovered from each class.[234] MECG supports Liberty's method of allocation based on cost of service principles.[235]

[234] Emery Direct, Ex. 7, Page 23, Table CTE-5.
[235] Initial Brief of Midwest Energy Consumers Group, Page 4.

185. This table shows the allocation percentage Liberty would assign to each of its rate classes:

Class	**Allocation Percentage**
Residential	45.02%
Commercial	9.05%
Small Heating	2.02%
General Power	18.01%
Transmission	1.08%
Total Electric Building	7.62%
Feed Mill	0.02%
Large Power	15.83%
Misc. Service	0.00%
Street Lighting	0.63%
Private Lighting	0.70%
Special Lighting	0.02%
Total	100%

186. The allocation factors listed by Liberty are no longer accurate in that they do not incorporate the revisions made in Liberty's most recent rate case. In addition, they do not allocate a share to Liberty's Electrical Vehicle customer class.[236]

187. Liberty's proposal to allocate costs among the various customer classes also creates problems related to rate switching. That is larger customers may attempt to

[236] Lange Rebuttal, Ex. 108, Page 6, Lines 1-3.

switch service to a different rate class to obtain a lower bill. That could leave fewer customers in a particular rate class to cover the same allocation, encouraging more rate switching. That could lead to under-collection of amounts sufficient to service the debt.[237]

188. Staff takes a different approach and recommends that the Securitized Utility Tariff Charge for all customers be calculated on the basis of loss-adjusted energy sales. That approach would not require allocation among the various customer classes.[238]

189. If Liberty's Winter Storm Uri related qualified extraordinary costs had been recovered through Liberty's Fuel Adjustment Clause in the absence of a securitization option, those costs would have been allocated to Liberty's customers proportionate to the energy usage, adjusted for losses.[239]

190. The benefits derived from closing Asbury are expected to flow to customers through decreased net costs of participation in Southwest Power Pool's Integrated Market. Those benefits are allocated to customers through the fuel adjustment clause on the basis of loss-adjusted energy usage. Therefore, Liberty's Asbury related energy transition costs should also be allocated on the basis of energy usage, adjusted for losses.[240]

191. Customer classes with relatively high energy consumption per customer will be the biggest beneficiaries of both the reduced operating costs and the reduced costs of obtaining energy to serve load that results from the closing of Asbury. Therefore,

[237] Lange Rebuttal, Ex. 108, Page 18, Lines 1-10.
[238] Lange Rebuttal, Ex 108, Page 2. Lines 10-15.
[239] Lange Rebuttal, Ex. 108, Page 32, Lines 7-10.
[240] Luebbert, Rebuttal, Ex. 106, Page 3, Lines 5-12, and Lange Rebuttal, Ex. 108, Page 27, Lines 1-6.

apportioning the cost of the Asbury retirement consistent with how the benefit of closing Asbury and including wind generation to replace it is flowed to customers is reasonable.[241]

Conclusions of Law

NNN. Section 393.1700.2(3))(c)h RSMo requires this securitization order to determine "how securitized utility tariff charges will be allocated among retail customer classes."

OOO. The Commission has much discretion in determining the theory or method it uses in determining rates[242] and can make pragmatic adjustments called for by particular circumstances.[243]

PPP. Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying "[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of fact. It has no claim to an exact science."[244]

QQQ. The definition of "securitized utility tariff charge" found at Section 393.1700.1(16) indicates that such charges are nonbypassable.

Decision

Cost allocation to the various customer classes is an important issue for the Midwest Energy Consumers Group, which advocated strongly for the sort of class

[241] Lange Rebuttal, Ex. 108, Page 27, Lines 15-18.
[242] *State ex rel. Public Counsel v. Public Service Com'n*, 274 S.W.3d 569, 586 (Mo. App. 2009).
[243] *State ex rel. U.S. Water/Lexington v. Missouri Public Service Com'n* 795 S.W.2d 593, 597 (Mo. App. 1990)
[244] *Spire Missouri, Inc. v. Missouri Public Service Com'n* 607 S.W.3d 759, 771 (Mo. App. 2020), *quoting National Ass'n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 103 S.Ct 2727, 77 L.Ed. 2d 195 (1983). That decision was quoting an earlier United State Supreme Court decision, *Colorado Interstate Gas Co. v. Federal Power Commission,* 324 U.S. 581, 589, 65 S.Ct. 829, 833, 89 L.Ed. 1206 (1945).

allocation proposed by Liberty. Their concern is that Staff's proposal will result in higher rates for industrial customers who use a lot of energy per customer. Nevertheless, the Commission finds that Staff's proposal to allocate costs on the basis of loss-adjusted energy sales is appropriate, and that allocation methodology will be implemented.

Non-contested Issues

The Commission makes the following findings of fact.

A) Identification and Procedure

Identification of Petitioner and Background

192. The Empire District Electric Company d/b/a Liberty is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri. Liberty is qualified to conduct business and is conducting business in Missouri, as well as in the states of Arkansas, Kansas, and Oklahoma. Liberty is engaged, generally, in the business of generating, purchasing, transmitting, distributing, and selling electricity in portions of the referenced four states. Liberty's Missouri operations are subject to the jurisdiction of the Commission as provided by law.

B) Financing Costs and Amount of Securitized Utility Tariff Costs to be Financed

Identification

193. The proceeds from the sale of the securitized utility tariff property will be used by Liberty to recover the securitized utility tariff costs incurred by Liberty in response to the anomalous weather event Winter Storm Uri and in connection with retiring Asbury, including purchases of fuel or power, carrying charges, deferred legal expenses and upfront financing costs.

194. Liberty proposed that the securitized utility tariff charges related to the securitized utility tariff bonds will be recovered over a scheduled period of 13 years, but not more than 15 years from the date of issuance but that amounts due at or before the end of that period for securitized utility tariff charges allocable to the 15-year period may be collected after the conclusion of the 15-year period.

195. The proposed structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order.

196. For so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of securitized utility tariff charges authorized under this Financing Order shall be nonbypassable and paid by all existing and future retail customers receiving electrical service from Liberty or its successors or assignees under Commission-approved rate schedules, even if a retail customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the State of Missouri. Liberty has no customers receiving electrical service under special contracts as of August 28, 2021.

197. The securitized utility tariff bonds will be secured by securitized utility tariff property that shall be created in favor of Liberty or its successors or assignees and that shall be used to pay or secure the securitized utility tariff bonds and approved financing costs. The securitized utility tariff property principally consists of the right to receive revenues from the securitized utility tariff charges.

198. It is appropriate that Liberty be authorized to establish the terms and conditions of the securitized utility tariff bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs, except as expressly limited in this order. The Finance Team and the Commission will review the complete terms and conditions of the securitization utility tariff bonds, the calculations of the initial securitized utility tariff charges and the expected and actual financing costs set forth in the issuance advice letter.

199. After the final terms of the securitized utility tariff bonds have been established and before the issuance of such bonds, it is appropriate for Liberty to determine the resulting initial securitized utility tariff charge in accordance with this Financing Order, and that such initial charge be final and effective upon the issuance of such securitized utility tariff bonds with such charge to be reflected on a compliance tariff sheet bearing such charge.

200. Liberty proposed a method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property.

201. Liberty proposed that it shall earn a return, at the cost of capital authorized from time to time by the Commission in Liberty's rate proceedings, on any moneys advanced by Liberty to fund the capital subaccount established under the terms of the indenture, any ancillary agreement, or other financing documents pertaining to the securitized utility bonds.

202. It is appropriate that Liberty shall be authorized to issue securitized utility tariff bonds pursuant to this Financing Order for a period commencing with the date of this Financing Order and extending 24 months following the date on which this Financing

Order becomes final and no longer subject to any appeal. If, at any time during the effective period of this Financing Order, there is a severe disruption in the financial markets of the United States, it is appropriate for the effective period to be extended with the approval of the Commission to a date that is not less than 90 days after the date such disruption ends.

Issuance Advice Letter

203. As the actual structure and pricing of the securitized utility tariff bonds will be unknown at the time this Financing Order is issued, prior to the issuance of the securitized utility tariff bonds, Liberty will provide an issuance advice letter to the Commission following the determination of the final terms of the securitized utility tariff bonds no later than one day after the pricing of the securitized utility tariff bonds. The issuance advice letter will include total upfront financing costs for the issuance. The form of such issuance advice letter, which shall indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs, is set out in Appendix A to this Financing Order. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the Commission may require. The issuance advice letter shall demonstrate the ultimate amounts of quantifiable net present value savings. Liberty may proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth business day after the Commission receives the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

204. If the actual upfront financing costs are less than the upfront financing costs included in the principal amount securitized, the periodic billing requirement, defined below, for the first annual true-up adjustment must be reduced by the amount of such unused funds (together with interest, if any, earned on the investment of such funds). If the actual upfront financing costs are more than the upfront financing costs included in the principal amount securitized, the periodic billing requirement for the first annual true-up adjustment may be increased by the amount of such unrecovered upfront financing costs.

C) Structure of the Proposed Securitization

BondCo

205. For purposes of issuing the securitized utility tariff bonds, Liberty will create a bankruptcy-remote special purpose entity (referred to as BondCo), which will be a Delaware limited liability company with Liberty as its sole member. BondCo will be formed for the limited purpose of acquiring securitized utility tariff property, issuing securitized utility tariff bonds in one or more tranches, and performing other activities relating thereto or otherwise authorized by this Financing Order. BondCo will not be permitted to engage in any other activities and will have no assets other than securitized utility tariff property and related assets to support its obligations under the securitized utility tariff bonds. Obligations relating to the securitized utility tariff bonds will be BondCo's only material liabilities. Liberty has proposed and the Commission has accepted that these restrictions on the activities of BondCo and restrictions on the ability of Liberty to take action on BondCo's behalf are imposed to achieve the objective that BondCo will be bankruptcy remote and not affected by a bankruptcy of Liberty or any of its successors. BondCo will

be managed by a board of directors or a board of managers with rights and duties similar to those of a board of directors of a corporation. As long as the securitized utility tariff bonds remain outstanding, BondCo will be overseen by at least one independent director or manager whose approval will be required for certain major actions or organizational changes by BondCo. BondCo will not be permitted to amend the provisions of the organizational documents that relate to bankruptcy-remoteness of BondCo without the consent of the independent directors or managers. BondCo will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent directors or managers. Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of BondCo as required by the rating agencies.

206. The initial capital of BondCo is expected to be not less than 0.50% of the original principal amount of the securitized utility tariff bonds issued by BondCo. Adequate funding of BondCo at this level is intended to protect the bankruptcy remoteness of BondCo. A sufficient level of capital is necessary to minimize this risk and, therefore, assist in achieving the lowest securitized utility tariff charges possible.

Statutory Requirements

207. BondCo will issue the securitized utility tariff bonds consisting of one or more tranches. The aggregate amount of all tranches of the securitized utility tariff bonds issued under this Financing Order must not exceed the principal amount approved by this Financing Order. BondCo will pledge to the indenture trustee, as collateral for payment of the securitized utility tariff bonds, the securitized utility tariff property, including

BondCo's right to receive the securitized utility tariff charges as and when collected, and certain other collateral described herein.

208. Concurrent with the issuance of any of the securitized utility tariff bonds, Liberty will transfer to BondCo all of (a) Liberty's rights and interests under this Financing Order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized under this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order and (b) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds. This transfer will be structured so that it will qualify as a true sale within the meaning of Section 393.1700.5.(3) and that such rights will become securitized utility tariff property concurrently with their sale to BondCo as provided in Section 393.1700.2.(3)(d). By virtue of the transfer, BondCo will acquire all of the right, title, and interest of Liberty in the securitized utility tariff property arising under this Financing Order.

Credit Enhancement and Arrangements to Enhance Marketability

209. Liberty has requested permission to use credit enhancements and arrangements to enhance marketability if such credit enhancements are required by the rating agencies to achieve the highest possible credit rating on the securitized utility tariff bonds. If the use of credit enhancements, or other arrangements is proposed by Liberty, Liberty must provide the Finance Team copies of all cost-benefit analyses performed by

or for Liberty that support the request to use such arrangements. This finding does not apply to the collection account or its subaccounts approved in this Financing Order.

Securitized Utility Tariff Property

210. Securitized utility tariff property and all other collateral will be held and administered by the indenture trustee under the indenture.

Servicer and the Servicing Agreement

211. Liberty will enter into a servicing agreement with BondCo. The servicing agreement may be amended, renewed or replaced by another servicing agreement subject to certain conditions set forth therein. The entity responsible for carrying out the servicing obligations under any servicing agreement is the servicer. Liberty will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the servicing agreement and as authorized by the Commission. Under the servicing agreement, the servicer is required to, among other things, impose and collect the securitized utility tariff charges for the benefit and account of BondCo, make the periodic true-up adjustments of securitized utility tariff charges required or permitted by this Financing Order, and account for and remit the securitized utility tariff charges to or for the account of BondCo in accordance with the remittance procedures contained in the servicing agreement and the indenture without any charge, deduction or surcharge of any kind. Under the terms of the servicing agreement, if any servicer fails to perform its servicing obligations in any material respect, the indenture trustee acting under the indenture to be entered into in connection with the issuance of the securitized utility tariff bonds, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of securitized utility tariff bonds, must, appoint an alternate party

to replace the defaulting servicer, in which case the replacement servicer will perform the obligations of the servicer under the servicing agreement. Any such servicer replacement must not cause the then current credit ratings of the securitized utility tariff bonds to be suspended, withdrawn, or downgraded. The obligations of the servicer under the servicing agreement and the circumstances under which an alternate servicer may be appointed will be more fully described in the servicing agreement. The rights of BondCo under the servicing agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the securitized utility tariff bonds.

212. The obligations to continue to provide service and to collect and account for securitized utility tariff charges will be binding upon Liberty and any other entity that provides electrical services to a person that is a retail customer located within Liberty's Service Territory as it existed on the date of this Financing Order, or that became a retail customer for electric services within such area after the date of this Financing Order, and is still located within such area.

Securitized Utility Tariff Bonds

213. BondCo will issue and sell securitized utility tariff bonds consisting of one or more tranches. The legal final maturity date of the securitized utility tariff bonds will not exceed 15 years from the date of issuance. The legal final maturity date and principal amounts of each tranche will be finally determined by Liberty with input from the Finance Team, consistent with market conditions and indications of the rating agencies, at the time the securitized utility tariff bonds are priced, but subject to ultimate Commission review through the issuance advice letter process. Subject to the conditions and criteria set forth in this Financing Order, Liberty will retain sole discretion regarding whether or

when to assign, sell, or otherwise transfer any rights concerning securitized utility tariff property arising under this Financing Order, or to cause the issuance of any securitized utility tariff bonds authorized in this Financing Order, subject to the right of the Commission to issue a disapproval letter to the issuance advice letter. BondCo will issue the securitized utility tariff bonds on or after the fifth business day after pricing of the securitized utility tariff bonds unless, before noon on the fourth business day after the Commission receives the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

Security for Securitized Utility Tariff Bonds

214. The payment of the securitized utility tariff bonds and related charges authorized by this Financing Order is to be secured by the securitized utility tariff property created by this Financing Order and by certain other collateral as described herein. The securitized utility tariff bonds will be issued under an indenture administered by the indenture trustee. The indenture will include provisions for a collection account and subaccounts for the collection and administration of the securitized utility tariff charges and payment or funding of the principal and interest on the securitized utility tariff bonds and financing costs in connection with the securitized utility tariff bonds. In accordance with the indenture, BondCo will establish a collection account as a trust account to be held by the indenture trustee as collateral to ensure the payment of the principal, interest, and financing costs approved in this Financing Order related to the securitized utility tariff bonds in full and on a timely basis. The collection account will include the general

subaccount, the capital subaccount, and the excess funds subaccount, and may include other subaccounts.

The General Subaccount

215. The indenture trustee will deposit the securitized utility tariff charge remittances that the servicer remits to the indenture trustee for the account of BondCo into one or more segregated trust accounts and allocate the amount of those remittances to the general subaccount. The indenture trustee will on a periodic basis apply moneys in this subaccount to pay principal of and interest on the securitized utility tariff bonds, to pay ongoing financing costs, and to meet the funding requirements of the other subaccounts. The funds in the general subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and all other components of the periodic payment requirement (as defined in finding of fact number 228), and otherwise in accordance with the terms of the indenture.

The Capital Subaccount

216. Liberty will make a capital contribution to BondCo, which BondCo will deposit into the capital subaccount. The amount of the capital contribution is expected to be not less than 0.50% of the original principal amount of the securitized utility tariff bonds, although the actual amount will depend on tax and rating agency requirements. The capital subaccount will serve as collateral to ensure timely payment of principal of and interest on the securitized utility tariff bonds and all other components of the periodic payment requirement. Any funds drawn from the capital account to pay these amounts

due to a shortfall in the securitized utility tariff charge remittances will be replenished through future securitized utility tariff charge remittances. The funds in the capital subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including investment earnings) will be used by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and all other components of the periodic payment requirement. Upon payment of the principal amount of all securitized utility tariff bonds and the discharge of all obligations that may be paid by use of securitized utility tariff charges, all amounts in the capital subaccount will be released to BondCo for payment to Liberty. Liberty will account for any recovery on earnings from its capital subaccount in a reconciliation in a future rate case to account for any capital subaccount earnings in excess of the rate of return already earned by Liberty in previous proceedings.

The Excess Funds Subaccount

217. The excess funds subaccount will hold any securitized utility tariff charge remittances and investment earnings on the collection account in excess of the amounts needed to pay current principal of and interest on the securitized utility tariff bonds and to pay other periodic payment requirements (including, but not limited to, replenishing the capital subaccount). Any balance in or allocated to the excess funds subaccount on a true-up adjustment date will be subtracted from the periodic billing requirement (as defined in finding of fact number 229) for purposes of the true-up adjustment. The money in the excess funds subaccount will be invested by the indenture trustee in short-term high-quality investments, and such money (including investment earnings thereon) will be

used by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and other periodic payment requirements.

Other Subaccounts

218. Other credit enhancements in the form of subaccounts may be utilized for the transaction provided that the use of such subaccounts is consistent with the statutory requirements. For example, Liberty does not propose use of an overcollateralization subaccount. Under Rev.Proc. 2002-49, as modified, amplified and superseded by Rev. Proc. 2005-62 issued by the Internal Revenue Service (IRS), the use of an overcollateralization subaccount is not necessary for favorable tax treatment nor does it appear to be necessary to obtain AAA ratings for the proposed securitized utility tariff bonds. If Liberty subsequently determines in consultation with the Finance Team, however, that use of an overcollateralization subaccount or other subaccount are necessary to obtain AAA ratings or will otherwise increase the quantifiable benefits of the securitization, Liberty may implement such subaccounts to reduce securitized utility tariff bond charges.

General Provisions

219. The collection account and the subaccounts described above are intended to provide for full and timely payment of scheduled principal of and interest on the securitized utility tariff bonds and all other components of the periodic payment requirement. If the amount of securitized utility tariff charges remitted to the general subaccount is insufficient to make all scheduled payments of principal and interest on the securitized utility tariff bonds and to make payment on all of the other components of the periodic payment requirement, the excess funds subaccount and the capital subaccount

will be drawn down, in that order, to make those payments. Any deficiency in the capital subaccount due to such withdrawals must be replenished to the capital subaccount on a periodic basis through the true-up process. In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Such accounts will be administered and utilized as set forth in the servicing agreement and the indenture. Upon the maturity of the securitized utility tariff bonds and the discharge of all obligations in respect thereof, remaining amounts in the collection account, other than amounts that were in the capital subaccount, will be released to BondCo and equivalent amounts will be credited by Liberty to customers. In addition, upon the maturity of the securitized utility tariff bonds any subsequently collected securitized utility tariff charges shall be distributed to retail customers.

Securitized Utility Tariff Charges—Imposition and Collection, Nonbypassability, and Alternative Electric Suppliers

220. If securitized utility tariff charges are collected by any third party billing servicer, such securitized utility tariff charges will be remitted to BondCo.

221. Securitized utility tariff charges will be identified on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill. Each customer bill shall include a statement to the effect that BondCo is the owner of the rights to securitized utility tariff charges and that Liberty is acting as servicer for BondCo. The tariff applicable to customers shall indicate the securitized utility tariff charge and the ownership of the charge.

222. If any customer does not pay the full amount it has been billed, the amount will be allocated first to the securitized utility tariff charges, unless a customer is in a repayment plan under the Commission's Cold Weather Rule, in which case payments will be prorated among charge categories in proportion to their percentage of the overall bill, with first dollars collected attributed to past due balances, if any.

223. Liberty will collect securitized utility tariff charges from all existing or future retail customers receiving electrical service from Liberty or its successors or assignees under Commission-approved rate schedules, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a change in regulation of public utilities in Missouri.

224. Liberty's proposal related to imposition and collection of securitized utility tariff charges is reasonable and is necessary to ensure collection of securitized utility tariff charges sufficient to support recovery of the securitized utility tariff costs and financing costs approved in this Financing Order. It is reasonable to require that Liberty's Securitized Utility Tariff Charge Rider SUTC, reflecting estimated charges, be filed before any securitized utility tariff bonds are issued under this Financing Order.

Allocation of Financing Costs Among Missouri Retail Customers

225. The periodic payment requirement is the required periodic payment for a given period (e.g., annually, semi-annually, or quarterly) due under the securitized utility tariff bonds. Each periodic payment requirement includes: (a) the principal amortization of the securitized utility tariff bonds in accordance with the expected amortization schedule (including deficiencies of previously scheduled principal for any reason); (b) periodic interest on the securitized utility tariff bonds (including any accrued and unpaid

interest); and (c) ongoing financing costs consisting of the servicing fee, rating agencies' fees, trustee fees, legal and accounting fees, and other ongoing fees and expenses. The initial periodic payment requirement for the securitized utility tariff bonds issued under this Financing Order should be updated in the issuance advice letter.

226. The periodic billing requirement represents the aggregate dollar amount of securitized utility tariff charges that must be billed during a given period (e.g., annually, semi- annually, or quarterly) so that the securitized utility tariff charge collections will be sufficient to meet the periodic payment requirement for that period, given: (i) forecast usage data for the period; (ii) forecast uncollectibles for the period; and (iii) forecast lags in collection of billed securitized utility tariff charges for the period.

True-Up of Securitized Utility Tariff Charges

227. Under Section 393.1700.2.(3)(c)e., the servicer of the securitized utility tariff bonds will use a formula-based true-up mechanism to make periodic, expeditious adjustments, at least annually, to the securitized utility tariff charges to:

(a) correct any undercollections or overcollections that may have occurred and otherwise ensure that BondCo receives securitized utility tariff charges that are required to satisfy the debt service obligations, including without limitation any caused by defaults, during the preceding 12 months; and

(b) ensure the billing of securitized utility tariff charges necessary to generate the collection of amounts sufficient to timely provide all payments of scheduled principal and interest and any other amounts due in connection with the securitized utility tariff bonds (including financing

costs and amounts required to be deposited in or allocated to any collection account or subaccount) during the period for which such adjusted securitized utility tariff charges are to be in effect.

The servicer will make true-up adjustment filings with the Commission annually, and if the servicer forecasts undercollections semi-annually.

228. True-up filings will be based upon the cumulative differences, regardless of the reason, between the periodic payment requirement (including scheduled principal and interest payments on the securitized utility tariff bonds) and the amount of securitized utility tariff charge remittances to the indenture trustee. To assure adequate securitized utility tariff charge revenues to fund the periodic payment requirement over the life of the securitized utility tariff bonds and to avoid overcollections and undercollections over time, the servicer will reconcile the securitized utility tariff charges using Liberty's most recent forecast of electricity deliveries (i.e., forecasted billing units) and estimates of transaction-related expenses. In the case of any adjustments occurring after the final scheduled payment date for the securitized utility tariff bonds, adjustments to the securitized utility tariff charges will be no less frequent than quarterly to correct for overcollections or undercollections by the earlier of the next bond payment date or the legal maturity date for the bonds. The calculation of the securitized utility tariff charges will also reflect both a projection of uncollectible securitized utility tariff charges and a projection of payment lags between the billing and collection of securitized utility tariff charges based upon Liberty's most recent experience regarding collection of securitized utility tariff charges.

229. The servicer will implement the true-up in the following manner, known as the standard true-up procedure:

(a) The level of actual sales for the subject period will be netted from the forecasted sales for that same period;

(b) Undercollections or overcollections will be determined by multiplying the result from Step (a) by the rate in effect for the same period; and

(c) The resulting dollar amount will be incorporated as a component of the subsequent period's recovery period amount, to be allocated consistent with this Financing Order or subsequent final and unappealable Rate Case Report and Order, whichever is most recent.

Interim True-Up

230. In addition to annual true-up adjustments, true-up adjustments may be made by the servicer more frequently at any time during the term of the securitized utility tariff bonds to correct any undercollection or, as provided for in this Financing Order, in order to assure timely payment of securitized utility tariff bonds. Further, the servicer must make a mandatory interim true-up adjustment semi-annually (or quarterly beginning 12 months prior to the final scheduled payment date of the last tranche of the securitized utility tariff bonds):

(a) if the servicer forecasts that securitized utility tariff charge collections will be insufficient to make all scheduled payments of principal, interest, and other amounts in respect of the securitized utility tariff bonds on a timely basis during the current or next succeeding payment period; or

(b) to replenish any draws upon the capital subaccount.

231. In the event an interim true-up (whether mandatory or optional) is necessary, the interim true-up adjustment must use the methodology utilized in the most recent annual true-up and be filed not less than 45 days before the first billing cycle of the month in which the revised securitized utility tariff charges will be in effect.

Additional True-Up Provisions

232. The true-up adjustment filing will set forth the servicer's calculation of the true-up adjustment to the securitized utility tariff charges. Each true-up adjustment must be filed not less than 45 days before the first billing cycle of the month in which the revised securitized utility tariff charges will be in effect. The Commission will have 30 days after the date of a true-up adjustment filing in which to confirm the mathematical accuracy of the servicer's adjustment. If the Commission determines any mathematical inaccuracy during its 30-day review, it will notify Liberty of the inaccuracy and Liberty will correct such inaccuracy in the securitized utility tariff charges that will go into effect on the effective date. Any true-up adjustment filed with the Commission should be effective on its proposed effective date, which must be not less than 45 days after filing. Liberty may adjust the actual true-up process in consultation with the Finance Team if necessary to ensure triple-A rating on the securitized utility tariff bonds.

Lowest Securitized Utility Tariff Charges

233. The proposed transaction structure includes (but is not limited to):

(a) the use of BondCo as issuer of the securitized utility tariff bonds, limiting the risks to securitized utility tariff bond holders of any adverse impact resulting from a bankruptcy proceeding of Liberty or any of its affiliates;

(b) the right to impose and collect securitized utility tariff charges that are nonbypassable and which must be trued-up annually or semi-annually, but may be trued-up more frequently, to assure the timely payment of the debt service and other ongoing financing costs;

(c) additional collateral in the form of a collection account that includes a capital subaccount funded in cash in an amount equal to not less than 0.50% of the original principal amount of the securitized utility tariff bonds and other subaccounts resulting in greater certainty of payment of interest and principal to investors and that are consistent with the IRS requirements that must be met to receive the desired federal income tax treatment for the securitized utility tariff bond transaction;

(d) protection of securitized utility tariff bondholders against potential defaults by a servicer that is responsible for billing and collecting the securitized utility tariff charges from existing or future retail customers;

(e) benefits for federal income tax purposes including (i) the transfer of the rights under this Financing Order to BondCo not resulting in gross income to Liberty and the future revenues under the securitized utility tariff charges being included in Liberty's gross income under its usual method of accounting, (ii) the issuance of the securitized utility tariff bonds and the transfer of the proceeds of the securitized utility tariff bonds to Liberty not resulting in gross income to Liberty, and (iii) the securitized utility tariff bonds constituting obligations of Liberty; and

(f) the securitized utility tariff bonds will be marketed using a process reviewed in consultation with the Finance Team, through which market conditions and investors' preferences, with regard to the timing of the issuance, the terms and conditions, related maturities, and other aspects of the structuring, marketing and pricing, will be determined, evaluated and factored into the structuring, marketing and pricing of the securitized utility tariff bonds.

D) Use of Proceeds

234. Upon the issuance of securitized utility tariff bonds, BondCo will use the net proceeds from the sale of the securitized utility tariff bonds (after payment of upfront financing costs) to pay Liberty the purchase price of the securitized utility tariff property. The proceeds from the sale of the securitized utility tariff property will be applied by Liberty to recover the securitized utility tariff costs incurred by Liberty in connection with Winter Storm Uri and the retirement of the Asbury Power Plant.

V. Conclusions of Law

The Commission makes the following conclusions of law.

RRR. Liberty is an electrical corporation, as defined in Section 393.1700.1.(6).

SSS. Liberty is entitled to file petitions for a financing order under Section 393.1700.

TTT. The Commission has jurisdiction and authority over Liberty's petitions under Section 393.1700.2.

UUU. The Commission has authority to approve this Financing Order under Section 393.1700.2.

VVV. Notices of Liberty's petitions were provided in compliance with Section 393.1700.2.(3)(a)b.

WWW. Energy transition costs are defined in Section 393.1700.1.(7) to include (a) pretax costs with respect to a retired or abandoned or to be retired or abandoned electric generating facility that is the subject of a petition for a financing order filed under the Securitization Law where such early retirement or abandonment is deemed reasonable and prudent by the Commission through a final order issued by the Commission, include, but are not limited to, the undepreciated investment in the retired or abandoned or to be retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses, with the foregoing to be reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, scrap and salvage proceeds, and may include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements; and (b) pretax costs that an electrical corporation has previously incurred related to the retirement or abandonment of such an electric generating facility occurring before August 28, 2021. Qualified extraordinary costs are defined in Section 393.1700.1.(13) to include costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

Securitized utility tariff costs are defined Section 393.1700.1(17) to include either energy transition costs or qualified extraordinary costs, as the case may be. Financing costs are defined in Section 393.1700.1.(8) to include: (i) interest and acquisition, defeasance, or redemption premiums payable on securitized utility tariff bonds; (ii) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to securitized utility tariff bonds; (iii) any other cost related to issuing supporting, repaying, refunding, and servicing securitized utility tariff bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of securitized utility tariff bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order; (iv) any taxes and license fees or other fees imposed on the revenues generated from the collection of securitized utility tariff charges or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued; (v) any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including Commission assessment fees, whether paid, payable, or accrued; and (vi) any costs associated with performance of the Commission’s responsibilities under the Securitization Law in connection with approving, approving subject to conditions, or rejecting a petition for a financing order, and in performing its

duties in connection with the issuance advice letter process, including costs to retain counsel, one or more financial advisors, or other consultants as deemed appropriate by the Commission and paid pursuant to the Securitization Law.

XXX. The Securitization Law permits an electrical corporation to request a Commission order authorizing it to finance securitized utility tariff costs, including its energy transition costs and qualified extraordinary costs.

YYY. BondCo will constitute an assignee of Liberty as defined in Section 393.1700.1.(2) when an interest in the securitized utility tariff property created under this Financing Order is transferred to BondCo.

ZZZ. The holders of the securitized utility tariff bonds and the indenture trustee will each be a financing party as defined in Section 393.1700.1.(10).

AAAA. BondCo may issue securitized utility tariff bonds in accordance with this Financing Order.

BBBB. The issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges approved in this Financing Order satisfies the requirements of Sections 393.1700.2.(3)(c)a., b. and c. mandating that (1) the amount of securitized utility tariff costs to be financed using securitized utility tariff bonds and the recovery of such costs is just and reasonable and in the public interest; (2) the proposed issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds; and (3) the proposed structuring and pricing of

the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order.

CCCC. Liberty is permitted to earn a return, at the cost of capital authorized from time to time by the Commission in Liberty's rate proceedings, but no more, on any moneys advanced by Liberty to fund reserves, if any, or capital accounts established under the terms of the indenture, any ancillary agreement, or other financing documents pertaining to the securitized utility tariff bond. Consequently, any earnings on the capital accounts in excess of the rate of return authorized by the Commission shall be accounted for in a future reconciliation pursuant to Section 393.1700.2(3)(c)k, RSMo (Cum. Supp. 2021).

DDDD. This Financing Order adequately describes the amount of financing costs that Liberty may recover through securitized utility tariff charges and specifies the period over which Liberty may recover securitized utility tariff charges and financing costs in accordance with the requirements of Section 393.1700.2.(3)(c)a.

EEEE. The method approved in this Financing Order for allocating the securitized utility tariff charges among retail customer classes satisfies the requirements of Section 393.1700.2.(3)(c)h.

FFFF. As provided in Section 393.1700.2.(3)(f), at the time the securitized utility tariff property is transferred from Liberty to BondCo, this Financing Order is irrevocable and, except for changes made pursuant to the formula-based true-up mechanism authorized herein, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized utility tariff charges approved in this Financing Order.

GGGG. As provided in Section 393.1700.2.(3)(d), the securitized utility tariff property identified herein will become securitized utility tariff property under the Securitization Law when they are sold to BondCo.

HHHH. (a) All rights and interests of Liberty under this Financing Order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized under this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order and (b) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds that are sold to BondCo under the securitized utility tariff property sale agreement, will be securitized utility tariff property within the meaning of Section 393.1700.1.(18).

IIII. Upon its sale to BondCo, the securitized utility tariff property specified in this Financing Order will constitute an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of securitized utility tariff charges depends on Liberty performing its servicing functions relating to the collection of securitized utility tariff charges and on future electricity consumption, as provided by Section 393.1700.5.(1)(a). The securitized utility tariff property will exist (a) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected; and (b) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the

electrical corporation or its successors or assignees and the future consumption of electricity by customers.

JJJJ. The securitized utility tariff property specified in this Financing Order will continue to exist until the securitized utility tariff bonds issued pursuant to this Financing Order are paid in full and all financing costs and other costs of such securitized utility tariff bonds have been recovered in full as provided in Section 393.1700.5.(1)(b).

KKKK. Upon the transfer by Liberty of securitized utility tariff property to BondCo, BondCo will have all of the rights, title, and interest of Liberty with respect to such securitized utility tariff property, including the right to impose, bill, charge, collect, and receive the securitized utility tariff charges authorized by this Financing Order.

LLLL. The securitized utility tariff bonds issued under this Financing Order will be securitized utility tariff bonds within the meaning of Section 393.1700.1.(15), and the securitized utility tariff bonds and holders thereof will be entitled to all of the protections provided under Section 393.1700.11.

MMMM. Amounts that are authorized by this Financing Order as securitized utility tariff charges are securitized utility tariff charges as defined in Section 393.1700.1.(16).

NNNN. As provided in Section 393.1700.5.(1)(e), the interests of BondCo and the indenture trustee in the securitized utility tariff property specified in this Financing Order, and in the revenues and collections arising from the securitized utility tariff property will not be subject to setoff, counterclaim, surcharge, or defense by Liberty or any other person or in connection with the reorganization, bankruptcy, or other insolvency of Liberty or any other entity.

OOOO. The methodology approved in this Financing Order to true-up the securitized utility tariff charges satisfies the requirements of Section 393.1700.2.(3)(c)e.

PPPP. Upon the sale from Liberty to BondCo of the securitized utility tariff property, the servicer will be able to recover the securitized utility tariff charges associated with such securitized utility tariff property only for the benefit of BondCo in accordance with the servicing agreement.

QQQQ. As provided in Section 393.1700.3.(5), Liberty retains sole discretion regarding whether to cause the securitized utility tariff bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Liberty may abandon the issuance of securitized utility tariff bonds under this Financing Order by filing with the Commission a statement of abandonment and the reasons therefor.

RRRR. The sale of the securitized utility tariff property from Liberty to BondCo will be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, Liberty's right, title, and interest in, to, and under the securitized utility tariff property if the sale agreement governing such sale expressly states that the sale is a sale or other absolute transfer in accordance with Sections 393.1700.5.(3)(a) and (b). Upon the sale in accordance with the previous sentence, the characterization of the sale as an absolute transfer and true sale and the corresponding characterization of the property interest of BondCo will not be affected or impaired by the occurrence of (a) the commingling of securitized utility tariff charges with other amounts; (b) the retention by Liberty of (i) a partial or residual interest, including an equity interest, in the securitized utility tariff property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed

on the collection of securitized utility tariff charges; (c) any recourse that BondCo may have against Liberty; (d) any indemnification rights, obligations, or repurchase rights made or provided by Liberty; (e) the obligation of Liberty to collect securitized utility tariff charges on behalf of BondCo; (f) Liberty acting as the servicer of the securitized utility tariff charges or the existence of any contract that authorizes or requires the electrical corporation, to the extent that any interest in securitized utility tariff property is sold or assigned, to contract with BondCo or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the securitized utility tariff charges for the benefit and account of BondCo or such financing party, and will account for and remit such amounts to or for the account of such assignee or financing party; (g) the treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes; (h) the granting or providing to bondholders a preferred right to the securitized utility tariff property or credit enhancement by the electrical corporation or its affiliates with respect to such securitized utility tariff bonds; or (i) any application of the formula- based true-up mechanism, in accordance with Section 393.1700.5.(3)(b).

SSSS. As provided in Section 393.1700.5.(2)(b), a valid and binding security interest in the securitized utility tariff property in favor of the indenture trustee will be created at the later of the time this Financing Order is issued, the indenture is executed and delivered by BondCo granting such security interest, BondCo has rights in the securitized utility tariff property or the power to transfer rights in the securitized utility tariff property, or value is received for the securitized utility tariff property. Upon the filing of a financing statement with the office of the secretary of state as provided in the

Securitization Law, a security interest in securitized utility tariff property shall be perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, and regardless of whether the parties have notice of the security interest in accordance with Section 393.1700.5.(2)(c). Without limiting the foregoing, upon such filing a security interest in securitized utility tariff property shall be perfected against all claims of lien creditors, and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with the Securitization Law.

TTTT. As provided in Section 393.1700.5.(3)(c), the transfer of an interest in securitized utility tariff property to BondCo will be perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with Section 393.1700.7.

UUUU. The priority of the sale perfected under Section 393.1700.5. will not be impaired by any later modification of this Financing Order or securitized utility tariff property or by the commingling of funds arising from securitized utility tariff property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under Section 393.1700.5., is terminated when they are transferred to a segregated account for BondCo or a financing party. Any proceeds of the securitized utility tariff property shall be held in trust for BondCo.

VVVV. As provided in Section 393.1700.5.(2)(f), if a default occurs under the securitized utility tariff bonds that are securitized by the securitized utility tariff property, the indenture trustee may exercise the rights and remedies available to a secured party under the Missouri Uniform Commercial Code, including the rights and remedies available

under part 6 of article 9 of the Missouri Uniform Commercial Code, and (a) the Commission may order that amounts arising from the related securitized utility tariff charges be transferred to a separate account for the indenture trustee's benefit, to which their lien and security interest may apply and (b) on application by the indenture trustee, the district court of Jasper County, Missouri, will order the sequestration and payment to the indenture trustee of revenues arising from the securitized utility tariff charges.

WWWW. As provided by Section 393.1700.9., (a) neither the State of Missouri nor its political subdivisions are liable on the securitized utility tariff bonds approved under this financing order, and the securitized utility tariff bonds are not a debt or a general obligation of the State of Missouri or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State of Missouri or any agency or political subdivision and (b) the issuance of securitized utility tariff bonds approved under this Financing Order does not, directly, indirectly, or contingently, obligate the State of Missouri or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the securitized utility tariff bonds, other than in their capacity as consumers of electricity.

XXXX. Under Section 393.1700.11.(1), the State of Missouri and its agencies, including the Commission, have pledged for the benefit and protection of bondholders, the owners of the securitized utility tariff property, other financing parties and Liberty, that the State and its agencies will not (a) alter the provisions of the Securitization Law, (b) take or permit any action that impairs or would impair the value of securitized utility tariff property or the security for the securitized utility tariff bonds or revises the securitized utility tariff costs for which recovery is authorized, (c) in any way impair the rights and

remedies of the bondholders, assignees, and other financing parties or (d) except for changes made pursuant to the true-up mechanism authorized under this Financing Order, reduce, alter, or impair securitized utility tariff charges until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the securitized utility tariff bonds have been paid and performed in full. BondCo is authorized under Section 393.1700.11.(2) and this Financing Order to include this pledge in the securitized utility tariff bonds and related documents. The pledge does not preclude limitation or alteration if full compensation is made by law for the full protection of the securitized utility tariff charges collected pursuant to this Financing Order and of the bondholders and any assignee or financing party entering into a contract with Liberty.

YYYY. This Financing Order will remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, merger, or sale of Liberty, its successors, or assignees.

ZZZZ. Liberty retains sole discretion regarding whether to cause the issuance of any securitized utility tariff bonds authorized by this Financing Order, including the right to defer or postpone such issuance.

AAAAA. Pursuant to Section 393.1700.2.(3)(a)c., this Financing Order is subject to judicial review only in accordance with Sections 386.500 and 386.510.

BBBBB. This Financing Order meets the requirements for a financing order under Section 393.1700.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

Approval

1. **Approval of Petition**. The petitions of Liberty for the issuance of a financing order under Sections 393.1700 are approved, subject to the conditions and criteria provided in this Financing Order.

2. **Authority to Securitize**. Liberty is authorized in accordance with this Financing Order to finance and to cause the issuance of securitized utility tariff bonds with a principal amount equal to the securitized balance at the time the securitized utility tariff bonds are issued that includes upfront financing costs, which includes (i) underwriters discounts and commissions, (ii) legal costs, (iii) rating agency fees, (iv) United States Securities and Exchange Commission registration fees and (v) any costs of the Commission associated with its responsibilities under the Securitization Law in connection with this Financing Order, and in performing its duties in connection with the issuance advice letter process, including costs of the Finance Team. The securitized balance as of any given date is equal to the balance of securitized utility tariff costs plus carrying costs of 5.16%, which reflects a weighted balance of 4.65% for Uri costs and 6.77% for Asbury costs through the date the securitized utility tariff bonds are issued. If the actual upfront financing costs are less than the upfront financing costs included in the aggregate principal amount of the securitized utility tariff bonds, the periodic billing requirement for the first annual true-up adjustment must be reduced by the amount of such unused funds (together with interest, if any, earned from the investment of such

funds). If the final upfront financing costs are more than the upfront financing costs included in the aggregate principal amount of the securitized utility tariff bonds, the periodic billing requirement for the first annual true-up adjustment may be increased by the amount of such unpaid upfront financing costs.

3. **Recovery of Securitized Utility Tariff Costs**. Liberty is authorized to recover $199,561,572 of its extraordinary costs related to Winter Storm Uri and $82,921,331 of energy transition costs related to the retirement of Asbury for a total recovery of $282,482,662. The upfront financing costs are estimated to be $7.9 million, which will be updated through the issuance advice process.

4. **Tracing Funds**. Liberty's proposed method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property shall be used to trace such funds and to determine the identifiable cash proceeds of any securitized tariff property subject to this Financing Order under applicable law.

5. **Third Party Billing**. If the State of Missouri or this Commission decides to allow billing, collection, and remittance of the securitized utility tariff charges by a third-party supplier within Liberty's Service Territory, such authentication will be consistent with the rating agencies' requirements necessary for the securitized utility tariff bonds to receive and maintain the targeted triple-A rating.

6. **Provision of Information**. Liberty shall take all necessary steps to ensure that the Commission and the Finance Team are provided sufficient and timely information as provided in this Financing Order in order to fulfill their obligations under the Securitization Law and this Financing Order.

7. **Issuance Advice Letter**. Liberty shall submit a draft issuance advice letter to the Finance Team for review not later than two weeks before the expected date of commencement of marketing the securitized utility tariff bonds. The Finance Team will review the issuance advice letter and provide timely feedback to Liberty based on the progression of structuring and marketing of the securitized utility tariff bonds. Not later than one day after the pricing of the securitized utility tariff bonds and before issuance of the securitized utility tariff bonds, Liberty shall provide the Commission an issuance advice letter in substantially the form of the issuance advice letter attached as Appendix A to this Financing Order. Liberty and the lead underwriters for the securitized utility tariff bonds shall provide to the Commission a written certificate, setting forth all calculations and assumptions used to support such calculations and certificate, certifying that the issuance of the securitized utility tariff bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring, marketing and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. In addition, if credit enhancements, or arrangements to enhance marketability are used, the issuance advice letter must include certification that such credit enhancements, or other arrangements are reasonably

expected to provide benefits as required by this Financing Order. The issuance advice letter must be completed, must evidence the actual dollar amount of the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued. The issuance advice letter will demonstrate the ultimate amounts of quantifiable net present value savings. All amounts which require computation shall be computed using the mathematical formulas contained in the form of the issuance advice letter in Appendix A to this Financing Order and the Securitized Utility Tariff Charge Rider SUTC. Electronic spreadsheets with the formulas supporting the schedules contained in the issuance advice letter must be included with such letter. The Finance Team may request such revisions of the issuance advice letter as may be necessary to assure the accuracy of the calculations and information included and that the requirements of the Securitization Law and of this Financing Order have been met. The initial securitized utility tariff charges and the final terms of the securitized utility tariff bonds set forth in the issuance advice letter will become effective on the date of issuance of the securitized utility tariff bonds (which may not occur before the fifth business day after pricing) unless before noon on the fourth business day after the Commission receives the issuance advice letter the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

8. **Approval of Tariff**. Before the issuance of any securitized utility tariff bonds under this Financing Order, Liberty must file compliance tariff sheets that conform to the tariff provisions in this Financing Order, but with rate elements identified as estimates. With its submission of the issuance advice letter, Liberty shall also submit a compliance tariff sheet, bearing an effective date no earlier than five business days after its

submission, containing the rate elements of the securitized utility tariff charge. That compliance tariff sheet shall become effective on the date the securitized utility tariff bonds are issued with no further action of the Commission unless the Commission issues a disapproval letter as described in ordering paragraph 7.

Securitized Utility Tariff Charges

9. **Imposition and Collection**. The servicer is authorized to impose on and collect from all existing and future retail customers located within Liberty's Service Territory as it exists on the date this Financing Order is issued and other entities which, under the terms of this Financing Order or the tariffs approved hereby, are required to bill, pay, or collect securitized utility tariff charges, securitized utility tariff charges in an amount sufficient to provide for the timely recovery of the aggregate periodic payment requirements (including payment of principal and interest on the securitized utility tariff bonds), as approved in this Financing Order. If there is a partial payment of an amount billed, the amount paid must first be allocated first between the indenture trustee and Liberty based on the ratio of the billed amount for the securitized utility tariff charge to the total billed amount, excluding any late fees, and second, any remaining portion of the payment must be allocated to late fees.

10. **BondCo's Rights and Remedies**. Upon the sale by Liberty of the securitized utility tariff property to BondCo, BondCo will have all of the rights and interest of Liberty with respect to the securitized utility tariff property.

11. **Collector of Securitized Utility Tariff Charges**. Liberty or any subsequent servicer of the securitized utility tariff bonds shall bill a customer or other entity, which, under the terms of this Financing Order or the tariffs approved hereby, is required to bill

or collect securitized utility tariff charges for the securitized utility tariff charges attributable to that customer.

12. **Collection Period**. The scheduled final payment of the last tranche of securitized utility tariff bonds may not exceed 13 years; *provided* that the legal final maturity of the securitized utility tariff bonds may extend to 15 years.

13. **Allocation**. Liberty must allocate the securitized utility tariff charges among rate classes in the manner described in this Financing Order.

14. **Nonbypassability**. Liberty shall collect and remit the securitized utility tariff charges, in accordance with this Financing Order.

15. **True-Ups**. Liberty shall file true-ups of the securitized utility tariff charges as described in this Financing Order.

16. **Ownership Notification**. Liberty shall ensure that each retail customer bill that includes the securitized utility tariff charge meets the notification of ownership and separate line item requirements set forth in this Financing Order.

Securitized Utility Tariff Bonds

17. **Issuance**. Liberty is authorized to issue one series of securitized utility tariff bonds as specified in this Financing Order. The securitized utility tariff bonds must be denominated in United States Dollars.

18. **Upfront Financing Costs**. Liberty may finance upfront financing costs in accordance with the terms of this Financing Order, which provides that the total amount for upfront financing cost, includes (i) underwriters discounts and commissions, (ii) legal costs, (iii) rating agency fees, (iv) United States Securities and Exchange Commission registration fees and (v) any costs of the Commission associated with its responsibilities

under the Securitization Law in connection with this Financing Order, and in performing its duties in connection with the issuance advice letter process, including costs of the Finance Team.

19. **Ongoing Financing Costs**. Liberty may recover its actual ongoing financing costs through its securitized utility tariff charges set forth in findings of fact for Issue 4 and Appendix B to this Financing Order. The estimated amount of ongoing financing costs is subject to updating in the issuance advice letter to reflect a change in the size of the securitized utility tariff bond issuance and other information available at the time of submission of the issuance advice letter. As provided in ordering paragraph 30, a servicer, other than Liberty or its affiliates, may collect a servicing fee higher than that set forth in Appendix B to this Financing Order, if such higher fee is approved by the Commission and the indenture trustee.

20. **Collateral**. All securitized utility tariff property and other collateral must be held and administered by the indenture trustee under the indenture as described in Liberty's petitions. BondCo must establish a collection account with the indenture trustee as described in finding of fact numbers 214 through 219. Upon payment of the principal amount of all securitized utility tariff bonds authorized in this Financing Order and the discharge of all obligations in respect thereof, all amounts in the collection account, including investment earnings, must be released by the indenture trustee to BondCo for distribution in accordance with ordering paragraph 21.

21. **Distribution Following Repayment**. Following repayment of the securitized utility tariff bonds authorized in this Financing Order and release of the funds held by the indenture trustee, the servicer, on behalf of BondCo, must distribute to retail

customers, the final balance of the collection account and all subaccounts (other than principal remaining in the capital subaccount), whether such balance is attributable to principal amounts deposited in such subaccounts or to interest thereon, remaining after all other financing costs have been paid. BondCo shall also distribute to retail customers any subsequently collected securitized utility tariff charges.

22. **Funding of Capital Subaccount**. The capital contribution by Liberty to be deposited into the capital subaccount shall be funded by Liberty and not from the proceeds of the sale of securitized utility tariff bonds at an amount not less than 0.50% of the original principal amount of the securitized utility tariff bonds. Upon payment of the principal amount of all securitized utility tariff bonds and the discharge of all obligations in respect thereof, all amounts in the capital subaccount will be released to BondCo for payment to Liberty, with any earnings to be accounted for a in a future reconciliation process under Section 393.1700.2(3)(c)k of the Securitization Statute.

23. **Original Issue Discount, Credit Enhancement**. Liberty may provide original issue discount or provide for various forms of credit enhancement, including letters of credit, an overcollateralization subaccount or other accounts, surety bonds, and other mechanisms designed to promote the credit quality or marketability of the securitized utility tariff bonds to the extent permitted by and subject to the terms of this Financing Order only if Liberty certifies that such arrangements are reasonably expected to provide benefits greater than their cost and such certifications are agreed with by the Finance Team. Except for a de minimis amount of original issue discount, any decision to use such arrangements to enhance credit or promote marketability must be made in consultation with the Finance Team. Liberty may not enter into an interest rate swap,

currency hedge, or interest rate hedging arrangement. This ordering paragraph does not apply to the collection account or its subaccounts approved in this Financing Order.

24. **Recovery Period**. The Commission authorizes Liberty to recover the securitized utility tariff costs and financing costs over a period not to exceed 15 years from the date the securitized utility tariff bonds are issued, although this does not prohibit recovery of securitized utility tariff charges for service rendered during the 15-year period but not actually collected until after the 15-year period.

25. **Amortization Schedule**. The securitized utility tariff bonds must be structured to provide a securitized utility tariff charge that is based on substantially levelized annual revenue requirements over the expected life of the securitized utility tariff bonds and utilize consistent allocation factors across rate classes, subject to modification in accordance with this Financing Order.

26. **Finance Team Participation in Bond Issuance**. The Commission, acting through the Finance Team, may participate with Liberty in discussions regarding the structuring, marketing and pricing of the securitized utility tariff bonds. The Finance Team has the right to provide input to Liberty and collaborate with Liberty in all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the underwriter and any other member of the syndicate group size, selection process, participants, allocations and economics; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Liberty and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond

maturities; (8) reporting templates; (9) the amount of any equity contributions; (10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The foregoing and other items may be reviewed during the entire course of the Finance Team's process. The Finance Team's review will begin immediately following this Financing Order becoming non-appealable and will continue until the issuance advice letter becomes effective. No member of the Finance Team will have authority to direct how Liberty places the securitized utility tariff bonds to market although they shall be permitted to attend all meetings convened by Liberty, participate in all calls, e-mails, and other communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds, or to be informed of the contents of such calls, e-mails and communications except such matters as are privileged under law. The Commission retains authority over enforcing the terms of its Financing Order, and the Finance Team may petition the Commission for relief for any actual or threatened violation of the terms of the Financing Order.

27. **Use of BondCo**. Liberty shall use BondCo, a bankruptcy-remote special purpose entity as proposed in its petitions, in conjunction with the issuance of the securitized utility tariff bonds authorized under this Financing Order. BondCo must be funded with an amount of capital that is sufficient for BondCo to carry out its intended functions and to avoid the possibility that Liberty would have to extend funds to BondCo in a manner that could jeopardize the bankruptcy remoteness of BondCo.

28. **Not State Obligations**. Each securitized utility tariff bonds shall contain on the face thereof a statement that: "Neither the full faith and credit nor the taxing power of

the State of Missouri is pledged to the payment of the principal of, or interest on, this bond."

Servicing

29. **Servicing Agreement**. The Commission authorizes Liberty to enter into the servicing agreement with BondCo and to perform the servicing duties approved in this Financing Order. Without limiting the foregoing, in its capacity as initial servicer of the securitized utility tariff property, Liberty is authorized to calculate, bill and collect for the account of BondCo, the securitized utility tariff charges authorized in this Financing Order, as adjusted from time to time to meet the periodic payment requirements as provided in this Financing Order; and to make such filings and take such other actions as are required or permitted by this Financing Order in connection with the periodic true-ups described in this Financing Order. The servicer will be entitled to collect servicing fees in accordance with the provisions of the servicing agreement, provided that, as set forth in Appendix B, the annual servicing fee payable to Liberty while it is serving as servicer (or to any other servicer affiliated with Liberty) must not at any time exceed 0.05% of the original principal amount of the securitized utility tariff bonds. The annual servicing fee payable to any other servicer not affiliated with Liberty must not at any time exceed 0.60% of the original principal amount of the securitized utility tariff bonds unless such higher rate is approved by the Commission under ordering paragraph 31.

30. **Administration Agreement**. The Commission authorizes Liberty to enter into an administration agreement with BondCo to provide the services covered by the administration agreements. The fee charged by Liberty as administrator under that agreement may not exceed $50,000 per annum plus reimbursable third-party costs.

31. **Replacement of Liberty as Servicer**. Upon the occurrence of a servicer termination event under the servicing agreement, the financing parties may replace Liberty as the servicer in accordance with the terms of the servicing agreement. If the servicing fee of the replacement servicer will exceed the applicable maximum servicing fee specified in ordering paragraph 29, the replacement servicer must not begin providing service until the date the Commission approves the appointment of such replacement servicer. No entity may replace Liberty as the servicer in any of its servicing functions with respect to the securitized utility tariff charges and the securitized utility tariff property authorized by this Financing Order, if the replacement would cause any of the then current credit ratings of the securitized utility tariff bonds to be suspended, withdrawn, or downgraded.

32. **Amendment of Agreements**. The parties to the servicing agreement, administration agreement, indenture, and securitized utility tariff property purchase and sale agreement may amend the terms of such agreements; provided that no amendment to any such agreement increases the ongoing financing costs without the approval of the Commission. Any amendment to any such agreement that may have the effect of increasing ongoing financing costs must be provided by BondCo to the Commission along with a statement as to the possible effect of the amendment on the ongoing financing costs.

33. **Collection Terms**. The servicer must remit collections of the securitized utility tariff charges to BondCo or the indenture trustee for BondCo’s account in accordance with the terms of the servicing agreement.

34. **Federal Securities Law Requirements**. Each other entity responsible for collecting securitized utility tariff charges from retail customers must furnish to BondCo or Liberty or to any successor servicer information and documents necessary to enable BondCo or Liberty or any successor servicer to comply with their respective disclosure and reporting requirements, if any, with respect to the securitized utility tariff bonds under federal securities laws.

Structure of the Securitization

35. **Structure**. Liberty shall structure the issuance of the securitized utility tariff bonds and the imposition and collection of the securitized utility tariff charges as set forth in this Financing Order.

Use of Proceeds

36. **Use of Proceeds**. Upon the issuance of securitized utility tariff bonds, BondCo shall pay the net proceeds from the sale of the securitized utility tariff bonds (after payment of upfront financing costs) to pay Liberty the purchase price of the securitized utility tariff property. Liberty will apply these net proceeds to recover the qualified extraordinary costs in connection with Winter Storm Uri and the energy transition costs in connection with retiring the Asbury Power Plant in accordance with the terms hereof.

Miscellaneous Provisions

37. **Continuing Issuance Right**. In accordance with Section 393.1700.2.(3)(c)n., Liberty has the continuing irrevocable right to cause the issuance of securitized utility tariff bonds in accordance with this Financing Order for a period extending 24 months following the date on which this Financing Order becomes final and no longer subject to any appeal. If, at any time during the effective period of this Financing

Order, there is a severe disruption in the financial markets of the United States, the effective period may be extended with the approval of the Finance Team to a date which is not less than 90 days after the date such disruption ends.

38. **Binding on Successors**. This Financing Order, together with the securitized utility tariff charges authorized in it, shall be binding on Liberty and any successor to Liberty that provides transmission and distribution service directly to retail customers in Liberty's Service Territory as it exists on the date of this Financing Order.

39. **Flexibility**. Subject to compliance with the requirements of this Financing Order, Liberty and BondCo should be afforded flexibility in establishing the terms and conditions of the securitized utility tariff bonds, including the final structure of BondCo, repayment schedules, term, payment dates, collateral, credit enhancement, required debt service, interest rates, use of original issue discount, and other financing costs.

40. **Effectiveness of Order**. This Financing Order will become effective in ten days, given the need to for prompt resolution of any issues regarding this proceeding, as well as to allow Liberty flexibility in accessing the financial markets. Notwithstanding the foregoing, no securitized utility tariff property is created hereunder, and Liberty is not authorized to impose, collect, and receive securitized utility tariff charges until the securitized utility tariff property has been sold to BondCo in conjunction with the issuance of the securitized utility tariff bonds.

41. **Regulatory Approvals**. All regulatory approvals within the jurisdiction of the Commission that are necessary for the recovery of the approved securitized utility tariff costs are the subject of the petitions and for all related transactions contemplated in the petitions are granted.

42. **Payment of Commission's Costs for Professional Services**. Liberty shall pay all of the costs of the Commission in connection with the petitions and this Financing Order, including, but not limited to, the Commission's outside attorneys' fees and the fees of the Finance Team from the proceeds of the securitized utility tariff bonds on the date of issuance.

43. **Effect**. This Financing Order constitutes a legal financing order for Liberty under the Securitization Law. A financing order gives rise to rights, interests, obligations, and duties as expressed in the Securitization Law. It is the Commission's express intent to give rise to those rights, interests, obligations, and duties by issuing this Financing Order. Liberty and the servicer are directed to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to compliance with the conditions and criteria established in this Financing Order.

44. This report and order shall become effective on October 2, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Woodruff, Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Missouri-American Water Company's Application for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System in and around an area of Benton County, Missouri (Pom-Osa Heights Subdivision)	)	**File No. WA-2022-0361**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

SERVICE

§3. Obligation of the utility

§18. Duty to render adequate service

The criteria to be used when evaluating applications for utility certificates of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.

VALUATION

§13. Ascertainment of value generally

In calculating the book value of a water system, contributed plant and contributed assets are presumed to be fully depreciated, resulting in a net zero base value for those assets.

WATER

§2. Certificate of convenience and necessity

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.

§8. Jurisdiction and powers of the State Commission

Water corporations, sewer corporations, and public utilities are subject to the jurisdiction and supervision of the Commission as provided under Section 386.250, RSMo.

§8. Jurisdiction and powers of the State Commission

The public interest is a matter of policy to be determined by the Commission.

§8. Jurisdiction and powers of the State Commission
It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.

§30. Rules and regulations
The Commission may waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) if the moving party files an affidavit stating that it has had no communication with the office of the Commission within the preceding 150 days regarding the subject matter of the application, pursuant to Rule 20 CSR 4240-4.017(1)(D).

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of October, 2022.

In the Matter of Missouri-American Water Company's Application for a Certificate of Convenience and Necessity Authorizing it to Install, Own, Acquire, Construct, Operate, Control, Manage and Maintain a Water System in and around an area of Benton County, Missouri (Pom-Osa Heights Subdivision)	))))))))	**File No. WA-2022-0361**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: October 12, 2022 Effective Date: November 11, 2022

On June 21, 2022, Missouri-American Water Company (MAWC) filed an application seeking a certificate of convenience and necessity for authority to acquire and operate the assets of a water system in and around an area of Benton County, Missouri known as the Pom-Osa Heights Subdivision (Pom-Osa), and for expedited treatment of its application. The Pom-Osa water system serves 62 residents and consists of a primary well, a backup well, a 10,000 gallon standpipe for storage, one well house and a water distribution system. MAWC's application also requests a waiver of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1) affirming that they had not had contact with the Commission about the subject of its application within 150 days before filing the application.

The Commission issued notice and set a deadline for intervention requests, but received none. The Commission also directed its Staff (Staff) to file a recommendation about MAWC's application. On September 26, Staff recommended the Commission approve MAWC's request for a CCN, with additional conditions and actions to be taken,

which were described in the memorandum accompanying Staff's recommendation. On October 6, MAWC responded to Staff's recommendation, stating that it had no objection to any of Staff's proposed conditions and requesting that the Commission issue its order approving MAWC's application and granting a CCN, as recommended in Staff's memorandum.

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

MAWC currently provides water service to approximately 474,000 customers and sewer service to approximately 16,500 customers in Missouri. MAWC is current on its water and sewer Public Service Commission assessment payments, is current on its annual reports, and is in good standing with the Secretary of State's office.

The requested water CCN would allow MAWC to provide water service by acquiring Pom-Osa's existing water system. Pom-Osa has made the decision to exit the water utility business, sell the existing system to MAWC, and rely upon MAWC to properly operate and maintain the existing water system in order that customers will continue to have safe and adequate service. According to information MAWC provided to Staff, the Pom-Osa home owners' association held a meeting on September 12, 2020, and its board passed a motion to move forward with the sale of the Pom-Osa water system to MAWC. The home owners' association is composed of all 62 residents who are served by the current water system and one additional member who uses a private well.

The drinking water system includes two wells (Well #1 and Well #2), a 10,000 gallon standpipe storage tank, one well house, and a water distribution system. There is currently no disinfection equipment. Well house #2 contains a meter, a booster

pump, four (120 gallons/each) hydropneumatic tanks providing typical system pressure ranging from 62 to 64 psi, piping controls, and electrical controls. Staff reported that the system appears to be generally well maintained and in good condition. MAWC has proposed several improvements, including a disinfection system using sodium hyperchlorite, installation of meters and meter pits, installation of flushing valves in the distribution system, and relocation of well controls.

According to Staff, MAWC indicated it was unable to obtain from the subdivision any invoices or supporting documentation of original cost and installation for any plant assets of the Pom-Osa water system, including improvements made in 2007 and 2018. After its investigation, Staff determined the Pom-Osa water system assets are contributed plant and the contributed assets are presumed to be fully depreciated, resulting in a net zero rate base value for those assets. Based on estimated values, Staff determined the net book value of the system to be $85,391. The proposed purchase price of $10,000 is $75,391 below Staff's calculation of the net book value at September 30, 2022, of the Pom-Osa water system assets.

Current customers pay a flat rate of $45.00 for water service. MAWC proposes charging its approved monthly flat rate of $48.40 until meters are installed. Once meters are installed MAWC proposes using its existing rates applicable to "Other Missouri" service areas under its water tariff, P.S.C. MO No.13.

Decision

More than ten days have passed since Staff filed its recommendation and no party has objected to MAWC's application or Staff's recommendation.[1] No party has requested

[1] Commission rule 20 CSR 4240-2.080(13) provides that parties shall be allowed ten days from the date of filing in which to respond to any pleading unless otherwise ordered by the Commission.

an evidentiary hearing.[2] Therefore, the Commission will rule upon MAWC's application.

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

There is a current and future need for water and sewer service. The existing customer base for the water and sewer systems being acquired have both a desire and need for service, as demonstrated by Pom-Osa's vote to sell the system to MAWC. In addition, there is a need for steps to be taken to update the water and sewer systems to ensure provision of safe and adequate service. MAWC has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable water service to 474,000 customers and sewer service to approximately 16,500 customers. MAWC has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of

[2] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).
[3] Section 393.170.3, RSMo.
[4] 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*, File No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994).

existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. MAWC has the financial ability to provide the service, and no external financing approval is being requested.

MAWC's acquisition of these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission,[5] and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.[6] The Commission finds that granting a CCN to MAWC, with the conditions and actions proposed by Staff, promotes the public interest.

Based on the application and Staff's recommendation, the Commission finds that MAWC has complied with the requirements of Sections 393.140 and 393.170, RSMo., and concludes that it is in the public interest for MAWC to provide water services to Pom-Osa, with the conditions as set out by Staff. The Commission also finds that MAWC had no communication with the Commission about the subject of the application within one hundred fifty days before the filing of the application. Therefore, the Commission will grant MAWC's requested CCN, order the conditions described in Staff's recommendation and memorandum, and waive the 60-day notice requirements of Commission Rule 20 CSR 4240-4.017.

THE COMMISSION ORDERS THAT:

1. MAWC is granted a waiver for this application of the 60-day notice requirement contained in Commission Rule 20 CSR 4240-4.017(1).

[5] *State ex rel. Public Water Supply District No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).
[6] *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993).

2. MAWC is granted a CCN to own, install, construct, operate, control, manage, and maintain the water assets of Pom-Osa and to provide water service in the Pom-Osa service area.

3. MAWC shall install meters for each customer within the Pom-Osa service area within three years of closing on the assets.

4. MAWC's recommended monthly rate of $48.40 is approved until meters are installed for each customer, or the cost of service is examined in a future rate case.

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

6. MAWC shall notify the Commission of closing on the assets within five (5) days after the closing.

7. If MAWC does not close on the water system assets within thirty (30) days following the effective date of this order, MAWC shall submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until MAWC determines that the transfer of the assets will not occur.

8. If MAWC determines that a sale of the assets will not occur, MAWC shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and MAWC shall submit tariff sheets, as appropriate, in its water tariff that would cancel service area maps and descriptions and rate sheets applicable to customers in the Pom-Osa area.

9. MAWC shall keep financial books and records for plant-in-service and operating expenses for the Pom-Osa water system in accordance with the NARUC Uniform System of Accounts.

10. The depreciation rates ordered for MAWC in File No. WR-2020-0344 are hereby adopted for Pom-Osa water assets.

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

12. MAWC shall provide training to its call center personnel regarding rates and rules applicable to the Pom-Osa water system customers.

13. MAWC shall include the Pom-Osa water system customers in its established monthly reporting to the Commission Customer Experience Department Staff (CXD Staff) on customer service and billing issues, on an ongoing basis, after closing on the assets.

14. MAWC shall, within thirty (30) days of closing on the assets, distribute to the Pom-Osa water system customers an informational brochure detailing the rights and responsibilities of the utility and its customers regarding its water service, consistent with the requirements of Chapter 13 of the Commission Rules (20 CSR 4240-13).

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

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

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

18. MAWC shall file notice in this case when it is ready to change its Pom-Osa customers from flat-rate to metered service thirty (30) days before it intends to do so.

19. MAWC shall provide to the CXD Staff a copy of the communication that it will send to Pom-Osa customers about changing rates within ten (10) days of filing notice in this case of its intent to do so.

20. MAWC shall file notice in this case once the conditions in Ordered Paragraphs 4-20 above have been completed.

21. This order shall become effective on November 11, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Keeling, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Grain Belt Express LLC for an Amendment to its Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and Associated Converter Station	)))))))	**File No. EA-2023-0017**

ORDER GRANTING APPLICATIONS TO INTERVENE

EVIDENCE, PRACTICE AND PROCEDURE

§22. Parties

Commission Rule 20 CSR 4240-2.075(3) states the Commission may grant intervention if the proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case or if granting the intervention would serve the public interest.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of October, 2022.

In the Matter of the Application of Grain Belt Express LLC for an Amendment to its Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and Associated Converter Station	)))))))	**File No. EA-2023-0017**

ORDER GRANTING APPLICATIONS TO INTERVENE

Issue Date: October 26, 2022 Effective Date: October 26, 2022

On August 24, 2022, Grain Belt Express LLC filed an application seeking an order amending its certificate of convenience and necessity granted in File No. EA-2016-0358. The Commission directed notice and set a deadline of September 30, 2022, for requests to intervene and October 11, 2022, for any responses to the requests to intervene.

On August 12, 2022, Norman Fishel, Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance dba Show Me Concerned Landowners (collectively referred to as the "Early Intervenors") filed motions to intervene. On August 22, 2022, Grain Belt Express filed a response in opposition to the requests to intervene of The Early Intervenors. Grain Belt Express argued that those requests were premature but did not object to the substance of those intervention requests. The Commission's order directing notice stated that the Early Intervenors' requests would be considered timely filed and directed that responses in opposition should be filed by October 11, 2022.

The Commission also received timely requests to intervene by David and Patricia Stemme, Union Electric Company d/b/a Ameren Missouri, Missouri Joint Municipal

Electric Utility Commission d/b/a Missouri Electric Commission, Renew Missouri Advocates d/b/a Renew Missouri, Gary and Carol Riedel, William W. Hollander and Amy Jo Hollander, Dustin Hudson, Sierra Club, Clean Grid Alliance, Missouri Farm Bureau Federation, Missouri Cattlemen's Association, Missouri Pork Association, Missouri Corn Growers Association, Missouri Soybean Association, and Associated Industries of Missouri. On October 11, 2022, Grain Belt Express filed a response to the request to intervene of Missouri Farm Bureau Federation, Missouri Cattlemen's Association, Missouri Pork Association, Missouri Corn Growers Association, and Missouri Soybean Association (collectively referred to as the "Agriculture Associations"). No other responses to the requests for intervention were received.

Commission Rule 20 CSR 4240-2.075(3) states the Commission ***may*** grant intervention if the proposed intervenor "has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case" ***or*** if granting the "intervention would serve the public interest." In its response to the requests to intervene of the Agriculture Associations, Grain Belt Express argues that the Agriculture Associations demonstrate no interest different from the general public and it will not serve the public interest for the Agriculture Associations to be granted intervention. The Commission disagrees. The intervention requests of the Agriculture Associations satisfy the requirements of Commission Rule 20 CSR 4240-2.075 and they have shown their interests as associations of various groups of agriculture producers and farmers are different from those of the general public. Further, the Commission finds having the specific interests of the Agriculture Associations represented during this proceeding will serve the public interest.

Additionally, after considering the unopposed applications to intervene, the Commission finds that requests to intervene of Norman Fishel, Missouri Landowners Alliance, and Eastern Missouri Landowners Alliance dba Show Me Concerned Landowners, David and Patricia Stemme, Union Electric Company d/b/a Ameren Missouri, Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission, Renew Missouri Advocates d/b/a Renew Missouri, Gary and Carol Riedel, William W. Hollander and Amy Jo Hollander, Dustin Hudson, Sierra Club, Clean Grid Alliance, and Associated Industries of Missouri satisfy the requirements of Commission Rule 20 CSR 4240-2.075, have interests which are different from those of the general public, and allowing them to intervene will serve the public interest.

Therefore, in accordance with Commission Rule 20 CSR 4240-2.075(3), the Commission will grant the requests to intervene.

THE COMMISSION ORDERS THAT:

1. The application to intervene of Norman Fishel is granted.

2. The application to intervene of Missouri Landowners Alliance is granted.

3. The application to intervene of Eastern Missouri Landowners Alliance dba Show Me Concerned Landowners is granted.

4. The application to intervene of David and Patricia Stemme is granted.

5. The application to intervene of Union Electric Company d/b/a Ameren Missouri is granted.

6. The application to intervene of Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission is granted.

7. The application to intervene of Renew Missouri Advocates d/b/a Renew Missouri is granted.

8. The application to intervene of Gary and Carol Riedel is granted.

9. The application to intervene of William W. Hollander and Amy Jo Hollander is granted.

10. The application to intervene of Dustin Hudson is granted.

11. The application to intervene of Sierra Club is granted.

12. The application to intervene of Clean Grid Alliance is granted.

13. The application to intervene of Missouri Farm Bureau Federation is granted.

14. The application to intervene of Missouri Cattlemen's Association is granted.

15. The application to intervene of Missouri Pork Association is granted.

16. The application to intervene of Missouri Corn Growers Association is granted.

17. The application to intervene of Missouri Soybean Association is granted.

18. The application to intervene of Associated Industries of Missouri is granted.

19. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Grain Belt Express LLC for an Amendment to its Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and Associated Converter Station	)))))))	**File No. EA-2023-0017**

ORDER GRANTING WAIVER

EVIDENCE, PRACTICE AND PROCEDURE

§23. Notice and hearing

The purpose of the 60-day notice rule is to provide notice to the Commission of issues liable to come before it so that the Commission can avoid improper extra-record communications about those issues. The Commission may find good cause to grant a waiver of the notice requirement when an applicant provides an affidavit stating it has not had contact with the Office of the Commission within 150 days.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of October, 2022.

In the Matter of the Application of Grain Belt Express LLC for an Amendment to its Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and Associated Converter Station	)))))))	**File No. EA-2023-0017**

ORDER GRANTING WAIVER

Issue Date: October 26, 2022 Effective Date: October 26, 2022

On July 12, 2022, Grain Belt Express LLC filed a notice of its intent to file an application to amend the certificate of convenience and necessity that the Commission granted it in 2019 in closed File No. EA-2016-0358. Grain Belt Express filed that notice in File No. EA-2016-0358, reasoning that the proposed amendment in response to changed circumstances was contemplated in the order that granted the certificate of convenience and necessity. The Commission removed the notice of intent to file from File No. EA-2016-0358 and opened the current file, File No. EA-2023-0017, to consider the application.

On August 24, 2022, 43 days after filing its notice of intent to file, Grain Belt Express filed its application seeking an order amending its certificate of convenience and necessity granted in File No. EA-2016-0358. On that same date, Grain Belt Express filed a request for the Commission to waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1). The Commission directed notice of the application and set a deadline of October 11, 2022, for any responses to the waiver request.

Missouri Landowners Alliance (MLA)[1]; the Staff of the Commission (Staff); and, jointly, Missouri Farm Bureau Federation, Missouri Cattlemen's Association, Missouri Pork Association, Missouri Corn Growers Association, and Missouri Soybean Association (collectively referred to as the "Agriculture Associations") filed responses in opposition to granting the waiver. Grain Belt Express, Renew Missouri Advocates d/b/a Renew Missouri, Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission (MEC), and Union Electric Company d/b/a Ameren Missouri each filed replies in support of the waiver request.

Commission Rule 20 CSR 4240-4.017 states in part:

> (1) Any person that intends to file a case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission and shall include a summary of all communication regarding substantive issues likely to be in the case between the filing party and the office of the commission that occurred in the ninety (90) days prior to filing the notice.
>
> * * *
>
> (D) A party may request a waiver of this section for good cause. Good cause for waiver may include, among other things, a verified declaration from the filing party that it has had no communication with the office of the commission within the prior one hundred fifty (150) days regarding any substantive issue likely to be in the case or that circumstances prevented filing the required notice and delaying the filing for sixty (60) days would cause harm.

Grain Belt Express argued that the Commission could interpret the 60-day notice rule as not being applicable because this is not an application for a new certificate, but rather, is a request to amend its previously granted certificate of convenience and

[1] MLA filed its pleading on behalf of itself, the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Normal Fishel, Gary and Carol Riedel, and Dustin Hudson. For convenience, these parties referred to themselves collectively as "MLA" and the Commission will do the same in this order.

necessity. Staff, MLA, and the Agriculture Associations oppose this interpretation arguing that the application is not a simple amendment to the previously granted certificate. Instead, Staff argues that the application is a request for a new certificate of convenience and necessity and, therefore, the 60-day notice rule must be applied. MLA and the Agriculture Associations also object to the 60-day waiver being granted, arguing that Grain Belt Express's motives for the timing of its filing do not show good cause to grant the waiver.

The Commission concludes that the 60-day notice rule is applicable to Grain Belt Express's application. However, the Commission does not conclude that it must, for that reason, reject the request for waiver. Similarly, Grain Belt Express's motives for the timing of its filing are not relevant to the question of whether the 60-day notice rule should be waived.

None of those opposing the waiver challenge Grain Belt Express's affidavit stating that there has been no communication with the Office of the Commission regarding any substantive issue likely to be in this case within the 193 days prior to the filing being made. The purpose of the 60-day notice rule, which is in 20 CSR 4240 Chapter 4, Standards of Conduct, is to provide notice to the Commission of issues liable to come before it so that the Commission can avoid improper extra-record communications about those issues. The provision of additional notice or warning to the public is not a purpose of the rule. Instead, the Commission provided due notice to the public upon the filing of the application.

Commission Rule 20 CSR 4240-4.017(1)(D), as quoted above, clearly states that the Commission may find good cause to grant a waiver of the notice requirement when an applicant provides an affidavit stating it has not had contact with the Office of the

Commission within 150 days. Grain Belt Express has met this requirement and there has been no suggestion otherwise. The Commission finds that the waiver should be granted.

THE COMMISSION ORDERS THAT:

1. The request for a waiver of Commission Rule 20 CSR 4240-4.017(1)(D) filed by Grain Belt Express on August 24, 2022, is granted.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Spire Missouri, Inc. d/b/a Spire's Request for Authority to Implement a General Rate Increase for Natural Gas Service Provided in the Company's Missouri Service Areas	)))))	**File No. GR-2022-0179**

ORDER DENYING THE UNIVERSITY OF MISSOURI'S APPLICATION TO INTERVENE OUT OF TIME

EVIDENCE, PRACTICE AND PROCEDURE

§22. Parties

On October 12, 2022, the University of Missouri filed an application to intervene out of time. Intervention out of time may be granted upon a showing of good cause, as provided by Commission Rule 20 CSR 4240-2.075(10).

§22. Parties

The Commission agrees with Spire that at this late stage allowing the University of Missouri to intervene does not serve the public interest. The University of Missouri is a sophisticated party and is responsible for seeing that notice of cases before the Commission reach the "correct employee" in a timely manner. Both direct and rebuttal testimony have been filed. The Commission finds that allowing the University of Missouri to intervene at this late stage unfairly prejudices the parties and intervenors who have already filed testimony advancing their positions and have responded to testimony based upon other party positions. Allowing the University of Missouri to intervene risks interjecting new issues that are not supported in testimony.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 26th day of October, 2022.

In the Matter of Spire Missouri, Inc. d/b/a Spire's Request for Authority to Implement a General Rate Increase for Natural Gas Service Provided in the Company's Missouri Service Areas	)))))	**File No. GR-2022-0179**

ORDER DENYING THE UNIVERSITY OF MISSOURI'S APPLICATION TO INTERVENE OUT OF TIME

Issue Date: October 26, 2022 Effective Date: October 26, 2022

Spire Missouri Inc. d/b/a Spire submitted tariff sheets on April 1, 2022, to initiate a general rate case. The Commission established a deadline of April 25, 2022, for applications to intervene in this matter.

On October 12, 2022, the University of Missouri (MU) filed an application to intervene out of time. MU operates four campuses in Missouri, two of which are served by Spire. MU states that because notice of this case was not received by the employees responsible for monitoring proceedings before the Commission, it did not become aware that this case would impact it until September 26, 2022. MU indicates that the proposed tariff revisions will increase its costs and impede its ability to provide services.

Intervention out of time may be granted upon a showing of good cause, as provided by Commission Rule 20 CSR 4240-2.075(10). The rule requires those who seek intervention after the intervention date to provide a "definitive statement" whether the entity seeking intervention "accepts the record established in the case" as of the date of

application. MU's application states it accepts the record in this case as it stands, but opposes Spire's proposed tariff revisions.

On October 24, 2022, Spire filed an objection to allowing MU to intervene in this case. Spire notes that this case has been well publicized in the media and MU is a sophisticated party capable of ascertaining when a case will impact the university. Eleven other parties intervened prior to direct testimony and both direct and rebuttal testimony have been filed.[1] Spire states that, at this point in the case, the parties have based their positions on "significant discovery, testimony, technical and settlement conferences that have occurred in the case to date." Spire also expresses concern that MU will, at this late time, seek to interject new issues into this proceeding.

On October 25, 2022, MU responded to Spire's objection stating that as a state university its interests can only be represented by allowing its intervention. MU states that it takes service under multiple Spire tariffs including residential, small general service, large general service, transportation service, and large volume transportation service. MU asserts that it is a custodian of public funds with a fiduciary responsibility to the taxpayers of the State of Missouri and to its students to ensure its expenditures are just and reasonable. MU further affirms that it will limit its participation to the record as currently developed.

The Commission agrees with Spire that at this late stage allowing MU to intervene does not serve the public interest. MU is a sophisticated party and is responsible for seeing that notice of cases before the Commission reach the "correct employee" in a timely manner. Both direct and rebuttal testimony have been filed. The Commission finds

[1] Surrebuttal testimony is due November 4, 2022.

that allowing MU to intervene at this late stage unfairly prejudices the parties and intervenors who have already filed testimony advancing their positions and have responded to testimony based upon other party positions. Allowing MU to intervene risks interjecting new issues that are not supported in testimony. The Commission will deny MU's application to intervene.

THE COMMISSION ORDERS THAT:

1. MU's application to intervene is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Clark, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Authority to Implement Rate Adjustments Required by 20 CSR 4240-20.090(8) and the Company's Approved Fuel and Purchased Power Cost Recovery Mechanism	)))))))	**File No. ER-2023-0011**

REPORT AND ORDER

RATES

§101. Fuel clauses

Where electric utility proposed that $31 million of what it termed "extraordinary" fuel costs not pass through its fuel adjustment clause, but instead be deferred and included in a regulatory asset under the provisions of Section 393.1655.5 (Supp. 2021), the Commission denied the request as the Commission has no authority under the statute to exclude consideration of the rebasing of base energy costs required in a general rate case from the calculation of the 3% compound annual growth rate (CAGR) cap set forth in Section 393.1655.3 (Supp. 2021).

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Authority to Implement Rate Adjustments Required by 20 CSR 4240-20.090(8) and the Company's Approved Fuel and Purchased Power Cost Recovery Mechanism	)))))))	**File No. ER-2023-0011**

REPORT AND ORDER

Issue Date: November 9, 2022

Effective Date: November 19, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Authority to Implement Rate Adjustments Required by 20 CSR 4240-20.090(8) and the Company's Approved Fuel and Purchased Power Cost Recovery Mechanism	)))))))	**File No. ER-2023-0011**

PARTIES & APPEARANCES

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REGULATORY LAW JUDGE: Kenneth J. Seyer

REPORT AND ORDER

I. Procedural History

On July 1, 2022[1], Evergy Missouri West, Inc. d/b/a Evergy Missouri West (EMW), pursuant to Section 386.266, RSMo,[2] and Commission Rule 20 CSR 4240-20.090(8), filed a tariff sheet proposing to revise its fuel adjustment rate (FAR) in its tariffed fuel adjustment clause (FAC).[3] EMW proposed to set the fuel adjustment rate per kilowatt-hour (kWh) to $0.00157 for Accumulation Period (AP) 30 (December 2021 through May 2022) and Recovery Period 30 (September 2022 through August 2023), effective September 1. In its filing, EMW reported that actual net energy costs exceeded the base energy costs included in base rates by $45,989,755 (after applying a jurisdictional factor).[4] In accordance with the Commission's rule and EMW's approved FAC, EMW filed an FAC tariff change in rates to recover 95% of those cost changes, or $43,690,267, plus $562,597 in interest, subject to adjustment for a Plant-in-Service Accounting (PISA) deferral of $31 million, and before taking into account true-up, interest, and any ordered adjustments.[5]

Concurrent with its filing to revise the FAR in its FAC, EMW made a true-up filing for AP27 reporting an under-recovery of $522,660.[6] Also included in the FAC filing is an adjustment, or refund to customers, of $160,892, plus interest of $10,613, ordered in EMW's ninth FAC prudence review, File No. EO-2020-0262. The resulting

[1] Unless otherwise noted, all dates refer to 2022.
[2] Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.
[3] Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.
[4] Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.
[5] Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.
[6] Exh. 2, *Direct Testimony of Lisa Starkebaum*, p. 6.

under-recovered true-up amount is $351,155.[7] After adjustments, the fuel and purchased power adjustment (FPA) proposed by EMW was $44,604,020.[8] Of that $44.6 million FPA, EMW proposed that $31 million of "extraordinary" fuel costs not pass through its FAC. Instead, EMW proposed that the $31 million be included in a regulatory asset, as provided by Section 393.1655.5, RSMo (Supp. 2021).[9]

On July 28, the Staff of the Commission (Staff) recommended the Commission issue an order rejecting the proposed revised tariff sheet and direct EMW to file a substitute tariff sheet that includes the $31 million fuel costs that the Company proposed to defer to a PISA regulatory asset.[10] On August 15, the Office of the Public Counsel (OPC) filed a *Motion for Summary Determination and Rule Variance or, in the Alternative, Request for Expedited Procedural Schedule* (Motion for Summary Determination).[11]

On August 24, the Commission issued an order rejecting the Company's proposed revised tariff sheet, assigned Tracking No. JE-2023-0005, but allowed the Company to file any revised tariff sheets necessary to implement interim fuel adjustment rates consistent with uncontested components of the Company's proposed fuel adjustment rates.[12] On August 31, the Company filed a proposed interim tariff revision that reflected recovery of $13.6 million of FAC-related costs in the fuel adjustment rate, after removal of the $31 million deferral amount that is in dispute.[13] On September 14, the Commission

[7] Exh. 2, *Direct Testimony of Lisa Starkebaum*, p. 6.
[8] $43,690,267 + $562,597 + $351,155 = $44,604,019.
[9] Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.
[10] Exh. 100, *Rebuttal Testimony of Brooke Mastrogiannis,* pp. 2-3.
[11] *Motion for Summary Determination and Rule Variance or, in the Alternative, Request for Expedited Procedural Schedule* (filed August 15).
[12] *Order Rejecting Tariff to Change Fuel Adjustment Rates* (issued August 24).
[13] Letter dated August 31 from Roger Steiner, Corporate Counsel, Evergy, Inc. to Morris Woodruff, Secretary of the Commission (filed August 31).

approved the proposed interim tariff sheet, effective October 1.[14]

On September 16, the Commission ordered a procedural schedule that set the evidentiary hearing for September 30,[15] effectively denying OPC's Motion for Summary Determination and granting its request for an expedited procedural schedule. On September 20, the procedural schedule was amended to, among other things, set a deadline for the parties to file a joint list of issues.[16] Written direct and rebuttal testimony was filed by the parties. Per the procedural schedule, surrebuttal testimony was presented at the evidentiary hearing.

The joint list of issues filed on September 23 identified six issues to be decided by the Commission:[17]

1. Should the Commission approve EMW's request to defer $31 million of FAC fuel and purchased power costs for further treatment in a subsequent general rate case?

2. Should the Commission consider the FAC rate adjustment mechanism's requirement that fuel and purchased power costs will be rebased in EMW's general rate case (File No. ER-2022-0130) in determining the amount of EMW's requested deferral in this FAC proceeding?

3. What is the full amount of the current FPA for AP30?

4. If EMW's current FAC rate is changed to allow for full recovery of the FPA for AP30 and no other changes were made to the rates currently in effect, what would the resulting average overall rate for EMW be?

    a. What is the percentage difference between this rate and EMW's average overall rate as of the date new base rates were set in EMW's most recent general rate proceeding concluded prior to the date that EMW gave notice under Section 393.1400, RSMo?

[14] *Order Approving Interim Tariff to Change Fuel Adjustment Rates* (issued September 14).
[15] *Order Setting a Procedural Schedule* (issued September 16).
[16] *Order Amending Procedural Schedule* (issued September 20).
[17] *Joint List of Issues, Order of Witnesses, Order of Cross Examination and Order of Opening Statements* (filed June 23).

5. Does allowing for recovery of the full FPA for AP30 through EMW's FAC result in a change in the rates charged under EMW's FAC that would cause EMW's average overall rate to exceed the 3% CAGR[18] cap set forth in Section 393.1655.3, RSMo?

6. Should EMW be permitted to defer any portion of the costs related to AP30 on the basis of the company's claim that those costs are extraordinary?

   a. If so, what accounting treatment should the deferral receive?

Subsequently, the parties filed statements of their positions on the six issues. In their statements of positions, the parties agreed on the third issue.

The Commission held an evidentiary hearing on September 30. Initial post-hearing briefs were filed on October 14. Reply briefs and proposed findings of fact and conclusions of law were filed on October 21.

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. EMW is an "electrical corporation" and "public utility," as those terms are defined by Section 386.020, RSMo. On July 1, EMW filed a tariff sheet proposing to revise its FAR in its tariffed FAC.[19]

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

[18] Compound Annual Growth Rate.
[19] Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.

3. Staff is a party to this case pursuant to Commission Rule 20 CSR 42402.010(10).

4. EMW filed revised tariffs for a general rate increase proceeding on January 30, 2018.[20] The Commission approved tariffs setting new rates in File No. ER-2018-0146 that became effective on December 6, 2018.[21]

5. On December 31, 2018, in File No. EO-2019-0045, EMW elected to make deferrals through PISA, pursuant to Section 393.1400, RSMo.[22]

6. EMW filed revised tariffs for a general rate increase proceeding on January 7.[23] A final order approving tariffs has not yet been issued in that case.[24]

7. EMW's AP30 covered the period of December 2021 through May 2022.[25]

8. EMW's FPA for AP30 is $44,604,020.[26]

9. EMW proposed that $31 million of AP30 fuel and purchased power costs not pass through its FAC. Instead, EMW proposed that the $31 million, which it alleged were "extraordinary," be included in a regulatory asset, as provided in Section 393.1655.5, RSMo (Supp. 2021) and recovered in rates in a subsequent general rate case.[27]

10. EMW's AP29 covered the period of June 2021 through November 2021.[28]

[20] File No. ER-2018-0146, Application, Proposed Tariff Sheets, Minimum Filing Requirements (filed January 30, 2018).
[21] Exh. 1, *Direct Testimony of Darrin R. Ives,* p. 10; Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 8.
[22] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 1.
[23] File No. ER-2022-0130, *Notice of Intended Case Filing* (filed November 8, 2021).
[24] File No. ER-2022-0130.
[25] Exh. 2, *Direct Testimony of Lisa Starkebaum*, p. 4.
[26] Exh. 2, *Direct Testimony of Lisa A. Starkebaum*, p. 10 (filed October 7); Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, LMM-R-4, p. 63.
[27] Exh. 2, *Direct Testimony of Lisa Starkebaum*, Sch. LAS-1.
[28] Exh. 2, *Direct Testimony of Lisa Starkebaum*, p. 7.

11. EMW's FPA for AP29 was $47,488,718.[29]

12. EMW did not claim in testimony or documentation in its FAC rate change case for AP29 that any fuel and purchased power costs were "extraordinary" and should not pass through its FAC, but instead should be included in a regulatory asset and recovered in rates in a subsequent general rate case.[30]

13. Inflationary pressures due to the COVID-19 pandemic and Russia's war with Ukraine contributed to higher fuel costs in EMW's AP30.[31] EMW faced those same external factors during AP29, as well.[32]

14. If the full FPA of $44.6 million for AP30 is included in the FAR and recovered through the FAC, EMW's average overall rate will be $0.10223/kWh.[33]

15. EMW's average overall rate as of the date base rates were set in the last general rate proceeding concluded prior to when EMW elected PISA deferral treatment under Section 393.1400, RSMo, was $0.09367/kWh.[34]

16. The difference between EMW's average overall rate as of the date base rates were set in the last general rate proceeding concluded prior to when EMW elected PISA deferral treatment under Section 393.1400, RSMo, of $0.09367/kWh and EMW's average overall rate of $0.10223/kWh if the full FPA of $44.6 million for AP30 is included in the FAR and recovered through the FAC represents a 9.14% increase.[35]

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[29] File No. ER-2022-0174, Letter dated December 30, 2021, from Roger Steiner to Morris Woodruff, p.1; FAC Tariff Rider; (filed December 30, 2021).
[30] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, pp. 18-19. See, generally, File No. ER-2022-0174. See also, File No. ER-2022-0174 FAC Tariff Rider (filed December 30, 2021).
[31] Exh. 1, *Direct Testimony of Darrin R. Ives*, p.3 (filed July 1); Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 18.
[32] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 18.
[33] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 9, LMM-R-4, p. 4.
[34] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, pp. 8-9.
[35] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 9.

17. Compound Annual Growth Rate (CAGR) is the annualized average rate of growth across time taking into account the growth that has already occurred.[36] CAGR can be calculated for any given date.[37]

18. EMW's CAGR for September 1, the effective date of the proposed FAC tariff sheet filed by EMW on July 1, was 11.69%.[38] EMW's CAGR for December 6, the date to which the proposed tariff sheets filed by EMW in its pending general rate case (ER-2022-0130) have been suspended, will be 12.55%.[39]

19. The FPA recovers the difference between what was already collected from customers in base rates for fuel and purchased power costs and what fuel and purchased power costs were actually incurred in the accumulation period.[40]

20. In the most recent FAC case for EMW's sister company, Evergy Metro, Inc. (File No. ER-2023-0030), Evergy Metro's FAC actual net energy cost (ANEC) is nearly the same amount as its FAC net base energy cost (NBEC) included in its base rates – a relatively small difference of approximately $1.7 million.[41]

21. For the time period of December 2021 through May 2022, Evergy Metro's fuel costs were $105.3 million, while EMW's were $23.3 million – less than one-fourth of Evergy Metro's. In addition, for the same time period, Evergy Metro's purchased power costs were 13% higher than that of EMW. Yet, Evergy Metro did not describe its fuel and

[36] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 7.
[37] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 7.
[38] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 7.
[39] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 8.
[40] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 10.
[41] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 19.

purchased power costs as "extraordinary" nor request deferral of any portion of the costs.[42]

22. EMW has limited generation resources – much of which are intermittent, in that they rely on wind for generation – compared to Evergy Metro, which has a variety of cost-effective generation resources to sell in the Southwest Power Pool energy market to offset the cost of purchasing its energy requirements from that market.[43]

23. EMW's FPA for AP30 contains no costs related to the February 2021 Winter Storm Uri.[44]

24. EMW did not claim that a "force majeure" event occurred in AP30.[45]

25. EMW's fuel and purchased power costs for AP30 do not threaten the financial integrity of EMW.[46]

26. In the documents accompanying its tariff sheets to change its fuel adjustment rates, EMW did not mention the $31 million it claims are "extraordinary" fuel and purchased power costs to be deferred, as required by Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), nor did it state how it arrived at that figure.[47]

27. EMW submitted an FAC true-up filing on July 1 in File No. EO-2023-0010 that concluded that EMW had under-collected $522,660 from customers for AP27 (June 2020 through November 2020) to be recovered in the period of March 2021 through February 2022. Also included in the true-up filing was an ordered adjustment, or refund,

[42] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 20.
[43] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, pp. 20-22.
[44] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 23; Sch. LMM-R-5, p. 1.
[45] Exh. 1, *Direct Testimony of Darrin R. Ives*, p.13.
[46] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, p. 24.
[47] Exh. 200, *Rebuttal Testimony of Lena M. Mantle*, pp. 25-26 (citing generally to Tariff Revision, *Information Required by 20 CSR 4240-20.090(8)* (filed October 7)).

of $160,892 plus $10,613 interest related to EMW's ninth FAC prudence review, File No. EO-2020-0262. Combined, these amounts resulted in a total under-recovered true-up amount of $351,155.[48]

28. Staff recommended that the $31 million in fuel costs requested by EMW to be deferred should instead be included in EMW's FAR.[49]

III. Conclusions of Law

A. EMW is an "electrical corporation," as that term is defined by Section 386.020, RSMo. As such, EMW is subject to the jurisdiction, supervision, control, and regulation of the Commission, as provided in Chapters 386 and 393, RSMo.

B. Section 386.266.1, RSMo, states:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

C. Section 393.1400.2, RSMo, states:

> (1) Notwithstanding any other provision of this chapter to the contrary, electrical corporations shall defer to a regulatory asset eighty-five percent of all depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility's books commencing on or after August 28, 2018, if the electrical corporation has made the election provided for by subsection 5 of this section by that date, or on the date such election is made if the election is made after August 28, 2018. In each general rate proceeding concluded after August 28, 2018, the balance of the regulatory asset as of the rate-base cutoff date shall, subject only to the

[48] Exh. 2, *Direct Testimony of Lisa A. Starkebaum*, p. 6.
[49] Exh. 100, *Rebuttal Testimony of Brooke Mastrogiannis*, p. 3.

cap provided for in section 393.1655 or section 393.1656, as applicable, be included in the electrical corporation's rate base without any offset, reduction, or adjustment based upon consideration of any other factor, other than as provided for in subdivision (2) of this subsection, with the regulatory asset balance arising from deferrals associated with qualifying electric plant placed in service after the rate-base cutoff date to be included in rate base in the next general rate proceeding. The expiration of this section shall not affect the continued inclusion in rate base and amortization of regulatory asset balances that arose under this section prior to such expiration.

(2) The regulatory asset balances arising under this section shall be adjusted to reflect any prudence disallowances ordered by the commission. The provisions of this section shall not be construed to affect existing law respecting the burdens of production and persuasion in general rate proceedings for rate-base additions.

(3) Parts of regulatory asset balances created under this section that are not yet being recovered through rates shall include carrying costs at the electrical corporation's weighted average cost of capital, plus applicable federal, state, and local income or excise taxes. Regulatory asset balances arising under this section and included in rate base shall be recovered in rates through a twenty-year amortization beginning on the date new rates reflecting such amortization take effect.

D. Section 393.1655, RSMo (Supp. 2021) states, in part:

1. This section applies to an electrical corporation that has elected to exercise any option under section 393.1400 and that has more than two hundred thousand Missouri retail customers in 2018, and shall continue to apply to such electrical corporation until December 31, 2023.

* * *

3. This subsection shall apply to electrical corporations that have a general rate proceeding pending before the commission as of the later of February 1, 2018, or August 28, 2018. If the difference between (a) the electrical corporation's average overall rate at any point in time while this section applies to the electrical corporation, and (b) the electrical corporation's average overall rate as of the date new base rates are set in the electrical corporation's most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under section 393.1400, reflects a compound annual growth rate of more than three percent, the electrical corporation shall not recover any amount in excess of such three percent as a performance penalty.

* * *

5. If a change in any rates charged under a rate adjustment mechanism approved by the commission under sections 386.266 and 393.1030 would cause an electrical corporation's average overall rate to exceed the compound annual growth rate limitation set forth in subsection 3 or 4 of this section, the electrical corporation shall reduce the rates charged under that rate adjustment mechanism in an amount sufficient to ensure that the compound annual growth rate limitation set forth in subsection 3 or 4 of this section is not exceeded due to the application of the rate charged under such mechanism and the performance penalties under such subsections are not triggered. Sums not recovered under any such mechanism because of any reduction in rates under such a mechanism pursuant to this subsection shall be deferred to and included in the regulatory asset arising under section 393.1400 or, if applicable, under the regulatory and ratemaking treatment ordered by the commission under section 393.1400, and recovered through an amortization in base rates in the same manner as deferrals under that section or order are recovered in base rates.

* * *

7. For purposes of this section, the following terms shall mean:

(1) "Average base rate", a rate calculated by dividing the total retail revenue requirement for all the electrical corporation's rate classes by the total sales volumes stated in kilowatt-hours for all such rate classes used to set rates in the applicable general rate proceeding, exclusive of gross receipts tax, sales tax, and other similar pass-through taxes;

(2) "Average overall rate", a rate equal to the sum of the average base rate and the average rider rate;

(3) "Average rider rate", a rate calculated by dividing the total of the sums to be recovered from all customer classes under the electrical corporation's rate adjustment mechanisms in place other than a rate adjustment mechanism under section 393.1075 by the total sales volumes stated in kilowatt-hours for all of the electrical corporation's rate classes used to set rates under such rate adjustment mechanisms, exclusive of gross receipts tax, sales tax, and other similar pass-through taxes;

* * *

(7) "Force majeure event", an event or circumstance that occurs as a result of a weather event, an act of God, war, terrorism, or other event which threatens the financial integrity of the electrical corporation that causes a reduction in revenues, an increase in the cost of providing electrical service, or some combination thereof, and the event has an associated fiscal impact on the electrical corporation's operations equal to three percent or greater

> of the total revenue requirement established in the electrical corporation's last general rate proceeding after taking into account the financial impact specified in section 393.137. Any force majeure event shall be subject to commission review and approval, and shall not preclude the commission from reviewing the prudence of any revenue reductions or costs incurred during any proceeding to set rates;
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> * * *

E. Section 393.1655, RSMo (Supp. 2021) applies to an electrical corporation that has elected to exercise any option under Section 393.1400, RSMo, and that has more than 200,000 Missouri retail customers in 2018, and shall continue to apply to such electrical corporation until December 31, 2023. Section 393.1655, RSMo (Supp. 2021) applies to EMW.

F. EMW had a general rate proceeding pending before the Commission as of the later of February 1, 2018, or August 31, 2018. Thus, Section 393.1655.3, RSMo (Supp. 2021) applies to EMW.

G. Commission Rule 20 CSR 4240-20.090(1), states, in part:

> * * *
>
> (B) Actual net energy costs (ANEC) means prudently incurred fuel and purchased power costs net of fuel-related revenues of a rate adjustment mechanism (RAM) during the accumulation period;
>
> * * *
>
> (E) Base rates means the tariffed rates that do not change between general rate proceedings;
>
> * * *
>
> (H) FAC charge means the positive or negative dollar amount on each utility customer's bill, which in the aggregate is to recover from or return to customers the fuel and purchased power adjustment (FPA) amount;

(I) Fuel adjustment clause (FAC) means a mechanism established in a general rate proceeding which is designed to recover from or return to customers the fuel and purchased power adjustment (FPA) amounts through periodic changes to the fuel adjustment rates (FAR) made outside a general rate proceeding;

(J) Fuel adjustment rate (FAR) means the rate used to determine the FAC charge on each utility customer's bill during a recovery period of a FAC. The FAR shall be designed to recover from or return to customers the recovery period FPA. The FAR may be positive or negative;

(K) Fuel and purchased power adjustment (FPA) amount means the dollar amount intended to be recovered from or returned to customers during a given recovery period of a FAC. The FPA may be positive or negative. It includes:

1. The difference between the ANEC and NBEC of the corresponding accumulation period taking into account any incentive ordered by the commission;

2. True-up amount(s) ordered by the commission prior to or on the same day as commission approval of the FAR adjustment;

3. Prudence adjustment amount(s) ordered by the commission since the last adjustment to the FAR;

4. Interest; and

5. Any other adjustment amount(s) ordered by the commission;

* * *

(U) Net base energy costs (NBEC) means the fuel and purchased power costs net of fuel-related revenues billed during the accumulated period in base rates;

(W) Rate adjustment mechanism (RAM) refers to either a commission-approved fuel adjustment clause (FAC) or a commission-approved interim energy charge (IEC);

* * *

H. Commission Rule 20 CSR 4240-20.090(2), states, in part:

> An electric utility may only file a request with the commission to establish, continue, or modify a RAM in a general rate proceeding and must rebase base energy costs in each general rate proceeding in which the FAC is continued or modified.

I. The FPA does not itself include fuel and purchased power costs that are already included in base rates because the FPA is defined as the difference between the fuel and purchased power costs net of fuel-related revenues billed during the accumulated period that are already included in base rates (NBEC) and the prudently incurred fuel and purchased power costs net of fuel-related revenues actually incurred during the accumulation period (ANEC).

J. Because the FPA does not itself include fuel and purchased power costs already included in base rates, the FAC charge does not recover fuel and purchased power costs that are already included in base rates.

K. Because the FAC charge does not recover fuel and purchased power costs already included in base rates, no fuel and purchased power costs already included in base rates are charged under the FAR.

L. Because no fuel and purchased power costs already included in base rates are charged under the FAR, no fuel and purchase power costs already included in base rates are recovered through a rate charged under a rate adjustment mechanism approved by the Commission under Section 386.266, RSMo.

M. When it comes to statutory interpretation, the primary rule is to give effect to legislative intent, as reflected in the plain language of the statute at issue.[50] When

[50] *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (quoting *Parktown Imps., Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009).

necessary, courts may sometimes rely on maxims known as the canons of statutory interpretation as considerations made in a genuine effort to determine what the legislature intended.[51] One such canon of statutory construction is the maxim *expressio unius est exclusio alterius*, generally understood to mean the expression or inclusion of one thing implies the exclusion of the other or of the alternative.[52] Under the maxim, where a statute designates a form of conduct, its manner of performance and operation, and the persons and things to which it refers, there is an inference that all omissions are understood as exclusions.[53] When the items expressed are members of an associated group or series, they justify the inference that the legislature deliberately excluded items not mentioned.[54] The maxim's force is strengthened where a thing is provided in one part of the statute and omitted in another.[55]

N. Because Section 393.1655.5, RSMo (Supp. 2021) explicitly states that it is triggered only if a change in rates needed to recover costs "charged under" one of two specific rate adjustment mechanisms would cause an electric corporation's average overall rate to exceed the relevant CAGR cap while Section 393.1655.3, RSMo (Supp. 2021) applies regardless of what causes the electric corporation's average overall rate to exceed the CAGR cap, the doctrine of *expressio unius est exclusio alterius* dictates that only costs that are actually recovered under one of the two rate mechanisms explicitly set forth in Section 393.1655.5, RSMo (Supp. 2021) should be considered when determining

[51] *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (quoting *Parktown Imps., Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009).
[52] *State v. Carson*, 317 S.W.3d 136, 141 (Mo. App. 2010).
[53] State v. Carson, 317 S.W.3d 136, 141-142 (Mo. App. 2010).
[54] State v. Carson, 317 S.W.3d 136, 142 (Mo. App. 2010).
[55] State v. Carson, 317 S.W.3d 136, 142 (Mo. App. 2010).

whether the triggering mechanism of the statute is met and that all other costs should be excluded from consideration.

O. Fuel and purchase power costs to be included in base rates in a pending general rate proceeding are not yet effective rates and so, under the maxim *expressio unius est exclusio alterius*, cannot be considered as part of a change to an existing FAC rate under Section 393.1655.5, RSMo (Supp. 2021).

IV. Decision

In order to grant EMW's request that the Commission allow it to defer $31 million in fuel and purchase power costs to be included in a PISA regulatory asset deferral account, as provided by Section 393.1655.5, RSMo (Supp. 2021) and recovered in rates in a subsequent general rate case, the Commission must agree with EMW's position that, because there is no language in Section 393.1655.5 that excludes consideration of the rebasing of base energy costs required in a general rate case from the calculation of the 3% CAGR cap, the Commission can consider rebasing of base energy costs in a future general rate case. EMW contends that doing so would result in an average overall rate increase that would exceed the 3% CAGR cap of 11.69% as of July 1 and the December 6 cap of 12.55%. EMW next argues that because it would exceed the 3% CAGR cap, Section 393.1655.5 requires the Commission to allow deferral.

The Commission simply disagrees with EMW's argument.

First, just because there is no language in Section 393.1655.5, RSMo (Supp. 2021) that *excludes* consideration of the rebasing of base energy costs required in a general rate case from the calculation of the 3% CAGR cap does not mean that the Commission

is free to do so. In fact, the opposite is true. The Commission has no authority beyond what is granted to it by state statutes.[56]

Second, amounts charged under the FAC do not include amounts included in base rates – the NBEC already billed to customers. EMW would like the Commission to find that if a change in any rates charged under EMW's FAC, when added to the amount that will be included in base rates in a future rate case to recover fuel and purchased power costs, would cause EMW's average overall rate to exceed the CAGR limitation of 3%, then EMW should be allowed to defer amounts to stay under the 3% CAGR cap. The Commission finds no legal basis for EMW's position.

Once future rebasing of base energy costs is taken out of consideration, the FPA to be recovered of $44.6 million results in an increase of 9.14% from EMW's average overall rate as of the date base rates were set in the last general rate proceeding concluded prior to when EMW elected PISA treatment and EMW's average overall rate including the full $44.6 million FPA for AP30. This 9.14% increase did not exceed the 3% CAGR cap of 11.69% on September 1, nor will it exceed the 3% CAGR cap of 12.55% on December 6. Therefore, the Commission will not approve EMW's request to defer $31 million, as the triggering mechanism for deferral under Section 393.1655, RSMo (Supp. 2021) has not been met. The Commission will order EMW to file a substitute tariff to include the full FPA of $44.6 million.

[56] Kan. City Power v. Mo. Pub. Serv. Comm'n, 618 S.W.3d 520, 524 (Mo. banc 2021) ("[The PSC's] powers are limited to those conferred by statutes, either expressly or by clear implication as necessary to carry out the powers specifically granted." (citing *State ex re. MoGas Pipeline, LLC v. Pub. Serv. Comm'n*, 366 S.W.3d 493, 496 (Mo. banc 2012).

Because this order affects EMW's pending general rate case (ER-2022-0130) and that case has an operation of law date of December 6, 2022, the Commission finds it reasonable to make this order effective in less than 30 days. Additionally, the Commission finds good cause exists for the compliance tariff to become effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. EMW's request to defer $31,000,000 pursuant to Section 393.1655, RSMo (Supp. 2021) to be included in a regulatory asset and recovered in rates in a subsequent general rate case is denied.

2. EMW shall file, no later than November 21, 2022, a tariff sheet that includes the full FPA of $44,604,020 in the FAR in its FAC with an expedited effective date of December 5, 2022.

3. No later than 12:00 p.m. on November 28, 2022, Staff shall file a recommendation on the substitute tariff and other parties shall file any responses.

4. This report and order shall become effective on November 19, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Holsman, and
Kolkmeyer CC., concur.
Coleman, C., absent.

Seyer, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for a Financing Order Authorizing the Financing of Extraordinary Storm Costs Through an Issuance of Securitized Utility Tariff Bonds	))))))	**File No. EF-2022-0155**

AMENDED REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§8. Stipulation

The Commission did not oppose the parties' efforts to reach agreement on certain contested issues, nor was the Commission dissatisfied with the terms of the Stipulation when complete. However, as proposed by the Stipulation, the Commission would be approving a financing order developed by the signatories that had yet to be written, and it is unclear if the Commission would be able to modify that financing order. The Commission will not approve the Stipulation because it is incomplete without a financing order and provided for no opportunity for Commission examination and input on the financing order.

EXPENSE

§3. Financing practices

§17. Extraordinary and unusual expenses

On March 11, 2022, Evergy Missouri West, Inc. d/b/a Evergy Missouri West submitted to the Commission a petition for a financing order, seeking authority to issue securitized utility tariff bonds regarding the extraordinary costs incurred by Evergy West on behalf of its customers during the mid-February 2021 cold weather event known as Winter Storm Uri. Evergy West filed that petition under Section 393.1700, RSMo.

§17. Extraordinary and unusual expenses

The Commission finds, based on the decisions in the following subsections, that Evergy West's costs in the amount of $307,811,246 incurred in relation to Winter Storm Uri are prudently incurred costs of an extraordinary nature that would cause extreme customer rate impacts if reflected in customer rates recovered through customary ratemaking and as such are "qualified extraordinary costs" as defined in Section 393.1700.1(13), RSMo.

§22. Reasonableness generally

The Commission finds that the recovery of this amount is just and reasonable and in the public interest. The Commission further finds that Winter Storm Uri was an "anomalous weather event" within the meaning of that statutory definition.

RATES

§101. Fuel clauses

Customarily, Evergy West would recover fuel and purchased power costs in excess of those reflected in its base rates through its Fuel Adjustment Clause contained in its tariff, which is where the costs Evergy West seeks to securitize were removed from. Due to the extraordinary nature of the costs for fuel and purchased power attributable to Winter Storm Uri, 56 the Commission permitted Evergy West to remove those costs from its Fuel Adjustment Clause pursuant to Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI).

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for a Financing Order Authorizing the Financing of Extraordinary Storm Costs Through an Issuance of Securitized Utility Tariff Bonds	))))))	**File No. EF-2022-0155**

AMENDED REPORT AND ORDER

Issue Date: November 17, 2022

Effective Date: November 27, 2022

TABLE OF CONTENTS

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SENIOR REGULATORY LAW JUDGE: John T. Clark

FINANCING ORDER

Procedural History

On March 11, 2022, Evergy Missouri West, Inc. d/b/a Evergy Missouri West (Evergy West) submitted to the Commission a petition for a financing order, seeking authority to issue securitized utility tariff bonds regarding the extraordinary costs incurred by Evergy West on behalf of its customers during the mid-February 2021 cold weather event known as Winter Storm Uri. Evergy West filed that petition under Section 393.1700, RSMo. (Securitization Law).

The Commission granted intervention to Midwest Energy Consumers' Group (MECG); The Missouri Industrial Energy Consumers (MIEC); Nucor Steel Sedalia, LLC (Nucor); and Velvet Tech Services, LLC (Velvet).

The parties prefiled direct, rebuttal, and surrebuttal testimony.[1] An evidentiary hearing was held August 1, 2022, through August 4, 2022. The parties filed post-hearing briefs on August 31, 2022, and reply briefs on September 12, 2022.[2]

Proposed Stipulation and Agreement

On the first day of the evidentiary hearing, Evergy West, the Staff of the Commission (Staff), and the Office of the Public Counsel (Public Counsel) submitted a *Non-Unanimous Stipulation and Agreement* (Stipulation) setting forth negotiated resolutions to certain contested issues among its signatories. MECG, Nucor, and Velvet were not signatories to the Stipulation, but affirmatively represented that they did not oppose it. The Stipulation did not include a proposed financing order, providing instead

[1] MIEC did not file testimony or a position statement, and the Regulatory Law Judge granted MIEC's request to be excused from the evidentiary hearing.
[2] The case is considered submitted as of the date of the final brief. 20 CSR 4240-2.150(1).

that the signatories agreed to modify the proposed financing order previously filed by Evergy West in order to (i) comply with the Securitization Law, (ii) incorporate the terms of the Stipulation and (iii) resolve cost recovery issues that remained contested. Some terms agreed in the Stipulation lacked sufficient detail to adequately resolve an issue, particularly those requiring a dollar amount. Despite the omission of a proposed financing order and certain imprecise terms, the Stipulation provided that it must be unconditionally approved by the Commission, without modification, or would be rendered void.

The Commission did not oppose the parties' efforts to reach agreement on certain contested issues, nor was the Commission dissatisfied with the terms of the Stipulation when complete. However, as proposed by the Stipulation, the Commission would be approving a financing order developed by the signatories that had yet to be written, and it is unclear if the Commission would be able to modify that financing order. The Commission will not approve the Stipulation because it is incomplete without a financing order and provided for no opportunity for Commission examination and input on the financing order.

Post-Order Motions

The Commission issued its Report and Order on October 7, 2022, to be effective on November 6, 2022. Evergy West, Staff, and Public Counsel filed timely applications for clarification and rehearing. Evergy West filed a response opposing parts of Public Counsel's clarification and rehearing application. After reviewing the clarification and rehearing motions, and Evergy West's response, the Commission has decided to amend its order to clarify the customary method of ratemaking, tax deduction issues, resource planning issues, and to correct an ordered paragraph. This Amended Report and Order

will be effective in ten days. If anyone believes that rehearing, reconsideration, or clarification is needed, they must file a new or renewed application for rehearing, reconsideration, or clarification before the effective date of this order.

Description of Securitization

Findings of Fact

1. In February 2021, Missouri was impacted by a severe winter weather event causing record sub-zero temperatures, snow and ice accumulation, and high winds. This cold weather occurrence from February 10, 2021 to February 19, 2021 is known as Winter Storm Uri (Winter Storm Uri).[3]

2. Evergy West seeks to recover qualified extraordinary costs resulting from Winter Storm Uri pursuant to the Securitization Law through the issuance of securitized utility tariff bonds.[4]

3. Securitization is a process authorized for the first time in Missouri by the legislature in the 2021 general legislative session with the adoption of the Securitization Law.[5]

4. Securitization is the financing of the purchase of a property right from a utility with the proceeds of securities issued by an entity whose credit quality is separated from that of the utility to attain higher credit ratings and lower financing costs. The utility sells the revenue stream and other entitlements and property created by a financing order, known as securitization property, to a newly established bankruptcy-remote special purpose entity (SPE) in a transaction that is a “true sale” for bankruptcy purposes.[6]

[3] Ives Direct, Ex. 8, Pages 6-14.
[4] Lunde Direct, Ex. 13, Schedule SL-2, Financing Order, Page 3.
[5] HB 734, Section 393.1700, RSMo, effective August 28, 2021.
[6] Lunde Direct, Ex. 13, Page 6, Lines 6-11.

5. A "true sale" transaction passes title, legal and equitable, to a SPE entity so that a bankruptcy court would not be expected to overturn the transaction and declare securitization property to be owned by a debtor utility in the event of bankruptcy and therefore subject to creditor actions.[7]

6. The securitization property will be composed of Evergy West's rights and interests created under this Financing Order, including the irrevocable right to impose, bill, charge, collect, and receive from Evergy West's retail electric customers the Securitized Utility Tariff Charge (SUTC), in amounts sufficient to pay principal and interest on the securitization bonds when due and ongoing financing costs.[8]

7. The SUTC will be paid by all existing and future retail customers receiving electrical service from Evergy West or its successors or assignees.[9]

8. Pursuant to the Securitization Law, Evergy West will transfer the irrevocable right to impose, bill, charge, collect and receive the SUTC and its other rights under the financing order to a newly created SPE to separate securitization bonds from Evergy West's credit.[10]

9. The SPE is formed to acquire the securitization property, issue the securitization bonds, pledge its assets to the trustee under the indenture, enter into related contracts, and perform other limited activities related to those basic purposes. The SPE is prohibited from engaging in other activities and will have no assets other than the

[7] Lunde Direct, Ex. 13, Page 31, Lines 20-23.
[8] Lunde Direct, Ex. 13, Page 7, Lines 20-23.
[9] Klote Direct, Ex. 11, Page 4, Lines 8-12. One Evergy West customer is served under a special contract established prior to August 28, 2021, and is exempted from the SUTC by statute.
[10] Lunde Direct, Ex. 13, Page 28, Lines 6-8.

securitization property and related assets. Obligations relating to the securitization bonds are the SPE's only significant liabilities.[11]

10. Under securitization the Commission authorizes the issuance of securitization bonds to finance the recovery of qualified extraordinary costs. The issuance of securitization bonds mitigates rate increases that would otherwise be necessary to recover those costs.[12]

11. Securitization will allow Evergy West to immediately recover extraordinary costs from Winter Storm Uri, including carrying costs from the date those costs were incurred to the date the securitization bonds are issued.[13]

12. Securitization saves ratepayers money because the costs of securitization are lower than customary ratemaking. The interest rate paid on AAA rated securitization bonds is lower than the interest rate that would be applied to Evergy West's carrying costs if recovered through customary ratemaking.[14]

Conclusions of Law

A. Evergy West is an electric corporation as defined in Section 386.020(15), RSMo.

B. Section 393.1700.2(2) allows an electrical corporation, which includes Evergy West, to petition the Commission for a financing order to allow for issuance of "securitized utility tariff bonds" to finance "qualified extraordinary costs."

C. "Qualified extraordinary costs" are defined in Section 393.1700.1(13) as:

> Costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if

[11] Lunde Direct, Ex. 13, Page 31, Lines 13-19.
[12] Klote Direct, Ex. 11, Page 6, Lines 16-20.
[13] Ives Direct, Ex. 8, Page 16, Lines 6-9.
[14] Ives Direct, Ex. 8, Page 16-17, Lines 2-22, 1-16.

> reflected in retail customer rates recovered through customary ratemaking, such as but not limited to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events;

D. The term “bonds” means securitization bonds or securitized utility tariff bonds as defined in Section 393.1700.1(15) RSMo.

E. The term “Securitization Property” means securitized utility tariff property or securitization property as defined in Section 393.1700.1(18) RSMo.

F. “Securitized utility tariff charge” is defined in Section 393.1700.1(16) as:

> the amounts authorized by the Commission to repay, finance, or refinance securitized utility tariff costs and financing costs and that are, except as otherwise provided for in this section, nonbypassable charges imposed on and part of all retail customer bills, collected by an electrical corporation or its successors or assignees, or a collection agent, in full, separate and apart from the electrical corporation's base rates, and paid by all existing or future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state;

G. Evergy West sought to securitize “qualified extraordinary costs” associated with the anomalous weather event of February 2021, known as Winter Storm Uri, in its petition in this file, File No. EF-2022-0155.

Contested Issues

The Securitization Law mandates that a financing order regarding the petitions for securitization authority include certain findings and other provisions. This Financing Order will meet all requirements of the statute. Not all of those requirements are contested. The order will first address the issues contested by the parties and then will address the additional statutory requirements that were not contested.

1. What amount of qualified extraordinary costs caused by Winter Storm Uri should the Commission authorize Evergy West to finance using securitized utility tariff bonds?

Findings of Fact[15]

13. In February 2021, Missouri was impacted by a severe winter weather event causing record sub-zero temperatures, snow and ice accumulation, and high winds. This cold weather occurrence from February 10, 2021, through February 19, 2021, is referred to as Winter Storm Uri. During Winter Storm Uri, Missouri, including Evergy West's service area,[16] experienced exceedingly cold temperatures, rolling electrical blackouts, and extreme natural gas prices.[17]

14. Evergy West is a member of the Southwest Power Pool, Inc. (SPP), a regional transmission organization (RTO) that exists to ensure the reliable supply of power and adequate transmission infrastructure as well as competitive wholesale electricity prices.[18]

15. February 2021 was among the ten coldest Februarys on record for Missouri, according to the National Oceanic and Atmosphere Administration. Temperatures for the period from February 6, 2021, to February 19, 2021, averaged more than 20 degrees below normal, the coldest 2-week period to impact Missouri in over 30 years, according to the Missouri Climate Center at the University of Missouri, College of Agriculture.[19]

[15] Issues are divided for purposes of organization and clarity. Findings of fact are cumulative; each set of findings incorporates findings stated for any previous issues.
[16] Ives Direct, Ex. 8, Pages 6-14.
[17] Ives Direct, Ex. 8, Page 6, Lines 7-18.
[18] Ives Direct, Ex. 8, Page 7, Lines 2-6.
[19] Ives Direct, Ex. 8, Pages 12-13, Lines 12-19, 3-6.

16. On February 14, 2021, SPP declared an Energy Emergency Alert that it was expecting weather conditions where all available resources would be needed to meet firm load obligations, and that it might not be able to sustain contingency reserves.[20]

17. On February 15, 2021, SPP declared an Energy Emergency Alert that its operating reserves fell below the required minimum. SPP committed all of its reserves and exhausted other avenues, resulting in it directing its members to implement controlled interruptions. Evergy West started to shed load at approximately noon and began customer service interruptions.[21] As the cold weather conditions persisted, Evergy West was again instructed to shed load on the morning of February 16, 2021, and Evergy West again interrupted service to customers.[22]

18. Evergy West continuously served customers during February 2021, with the exception of the above two load shedding events.[23]

19. Due to the extreme cold weather brought on by Winter Storm Uri, the price of natural gas increased dramatically. These higher fuel costs resulted in day-ahead and real-time electricity prices reaching SPP record highs of $4,393/MWh (February 18, 2021) and $4,029/MWh (February 16, 2021), respectively.[24]

20. Evergy West incurred approximately $11.8 million in fuel costs (an increase of $8.3 million from its average February fuel costs over 2018-2020), and $314.6 million in purchased power costs (an increase of $299.8 million from its average February purchased power costs). After adjustments for transmission costs, disallowances, and

[20] Ives Direct, Ex. 8, Page 7, Lines 6-10.
[21] Ives Direct, Ex. 8, Page 8, Lines 2-10.
[22] Ives Direct, Ex. 8, Pages 8-9, Lines 17-20, 1-6.
[23] Ives Direct, Ex. 8, Page 9, Lines 18-19.
[24] Ives Direct, Ex. 8, Pages 11-12, Lines 15-20, 1-3.

off-system sales revenue, Evergy West's total energy costs were $315.0 million, an increase of $296.5 million from its average February total energy costs.[25] Evergy West seeks to recover $295.5 million in fuel costs along with $54.6 million in carrying costs as "qualified extraordinary costs" under the Securitization Law.[26]

21. Recovering $295.5 million plus carrying costs through Evergy West's fuel and purchased power adjustment clause (FAC) would be harmful to Evergy West's customers. The FAC is intended to recover costs incurred during a six-month period over a subsequent twelve-month period. Recovering the entirety of the Winter Storm Uri costs through the FAC would create extreme customer rate impacts.[27]

22. Recovering Winter Storm Uri costs and revenues through FAC is not in the best interest of Evergy West or its customers, because of the extraordinary amount of costs that were incurred.[28]

23. In total, Evergy West seeks authority to securitize $356,720,636 for costs related to Winter Storm Uri. This amount includes $296,638,919 for fuel costs before applying the 99.62 percent retail energy allocator, $54,569,187 for carrying costs, and $6,639,758 in up-front financing costs. The total amount also removes non-fuel operation and maintenance costs of $274,934 that Evergy West originally sought to recover in its direct filing.[29]

[25] Ives Direct, Ex. 8, Page 14, Lines 12-17.
[26] Klote Surrebuttal, Ex. 12, Page 14 Table 1
[27] Ives Direct, Ex. 8, Page 15, Lines 20-22.
[28] Klote Direct, Ex. 11, Page 7, Lines 16-20.
[29] Klote Surrebuttal, Ex.12, Pages 13-14, Lines 18-19 and Table 1.

Conclusions of Law[30]

H. Section 393.1700.1(13) defines "qualified extraordinary costs as:

> Costs incurred prudently before, on, or after August 28, 2021, of an extraordinary nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events.

I. Section 393.1700.2(2), RSMo sets out the content that must be included in a utility's petition for a financing order to finance qualified extraordinary costs.

J. The Commission has previously issued a financing order authorizing the cost recovery of qualified extraordinary costs for Winter Storm Uri through securitization for another Missouri electric utility in File No. EO-2022-0040.[31]

Decision[32]

The Commission finds, based on the decisions in the following subsections, that Evergy West's costs in the amount of $307,811,246[33] incurred in relation to Winter Storm Uri are prudently incurred costs of an extraordinary nature that would cause extreme customer rate impacts if reflected in customer rates recovered through customary ratemaking and as such are "qualified extraordinary costs" as defined in Section 393.1700.1(13), RSMo. The Commission finds that the recovery of this amount is just and reasonable, and in the public interest. The Commission further finds that Winter Storm Uri was an "anomalous weather event" within the meaning of that statutory definition.

[30] Issues are divided for purposes of organization and clarity only. Conclusions of law are cumulative; each set of conclusions incorporates conclusions stated for any previous issues, as necessary. Some issues may not require additional conclusions of law.
[31] EO-2022-0040, Amended Report and Order, issued September 22, 2022.
[32] The number indicated in this section is derived from the Commission decisions on particular issues described subsequently in this order.
[33] Qualified extraordinary costs of $307,811,246 based on the sum of $280,667,566 in fuel and purchased power costs and $27,143,680 in carrying costs.

A) What amount of the costs, if any, that Evergy West is seeking to securitize would Evergy West recover through customary ratemaking?

B) What is the appropriate method of customary ratemaking absent securitization? What is the appropriate method of customary ratemaking absent securitization?

C) Under Section 393.1700.2(2)(e), 1 what is the "customary method of financing"? What are the costs that would result "from the application of the customary method of financing and reflecting the qualified extraordinary costs in retail customer rates"?

D) Should Evergy West's recovery include more than 95% of fuel and purchased power costs? Should Evergy West's recovery through securitized bonds include more than 95% of fuel and purchased power costs?

These four sub-issues are interrelated and the Commission will address them together.

Findings of Fact

24. The Commission authorized Evergy West to defer $297,316,445 of extraordinary costs from its FAC associated with Winter Storm Uri from its Accumulation Period 28, which encompassed the six-month period from December 2020 through May 2021. $6,588,116 of fuel and purchased power costs were approved to be passed through the FAC and were not considered extraordinary costs. [34]

25. Evergy West calculated the extraordinary cost amount to be removed from Accumulation Period 28 by calculating a three-year average baseline for February costs, using actual February costs for fuel, purchased power, emissions, transmission expense, and off-system sales revenues for the years 2018 through 2020.[35]

[34] Fortson Rebuttal, Ex. 102, Page 2, Lines 6-9 and footnote 2, and Order Approving Fuel Adjustment True-up and Approving Tariff to Change Fuel Adjustment Rates, File No. ER-2022-0005 (Aug. 18, 2021).
[35] Fortson Rebuttal, Ex. 102, Page 3, Lines 18-21.

26. Evergy West incurred approximately $11.8 million in fuel costs, which is an increase of $8.3 million from its average February fuel costs over the three years from 2018 to 2020. Evergy West incurred approximately $314.6 million in purchased power costs, which is an increase of $299.8 million from its February average. After adjustments for transmission costs, disallowances,[36] and off-system sales revenue, Evergy West's total energy costs were $315.0 million, an increase of $296.5 million from its average February total energy costs.[37]

27. Evergy West incurred approximately $296.5 million in extraordinary fuel and purchased power costs for its Missouri customers during Winter Storm Uri, of which $295.5 million was allocated to its retail customers based on a 99.62 percent retail energy allocator.[38]

28. Customarily, Absent securitization, Evergy West would file a fuel adjustment tariff designed to recover 95 percent of the energy cost differences from base rates. A fuel adjustment tariff filing is the customary procedure to recover fuel and purchased power costs or to credit revenues. A significant portion of cost recovery occurs in the first year for recovery following an expense through a FAC filing.[39]

29. Evergy West's FAC was first established in 2007.[40] Every Evergy West general rate case since then has included a 95/5 sharing mechanism in Evergy West's FAC tariff.[41]

[36] Disallowances as used here refers to disallowances as understood by Evergy West as part of its direct filing, and not the Commission's approved disallowances included in this order.
[37] Ives Direct, Ex. 8, Page 14, Lines 12-17.
[38] Klote Surrebuttal, Ex. 12, Page 14, Table 1.
[39] Klote Direct, Ex. 11, Pages 8-9, Lines 22-23, 1-2.
[40] Evergy West was then known as Aquila, and then KCP&L Greater Missouri Operations, before finally becoming Evergy Missouri West.
[41] Fortson Rebuttal, Ex. 102, Page 10, Lines 3-17.

30. Evergy West's FAC does not allow it to recover 100 percent of its fuel and purchased power costs. Evergy West's FAC requires it to accumulate its actual net energy costs over a six-month accumulation period, followed by a twelve-month recovery period during which the amount of actual net energy costs over the net base energy costs is reduced by a jurisdictional factor, and then 95 percent of that difference is either returned to or collected from customers.[42]

31. Evergy West's FAC requires it to retain 5 percent of any overcollected amounts or absorb 5 percent of any undercollected amounts for each accumulation period.[43]

32. The Commission included the 95/5 sharing mechanism in Evergy West's FAC to protect it from extreme fluctuations in fuel and purchased power costs while providing the company an incentive to take all reasonable actions to keep its fuel and purchased power costs as low as possible, and yet still have an opportunity to earn a fair return on its investment.[44]

33. If Evergy West were allowed to recover 100 percent of its fuel and purchased power costs, regardless of how high fuel costs go, it would be less incentivized to keep its fuel and purchased power costs as low as possible. Evergy West would bear no risk for those costs and all the costs and risk for Evergy West's fuel and purchased power decisions would shift to ratepayers.[45]

34. Another mechanism Evergy West could use to recover qualified extraordinary costs is to use an accounting authority order (AAO) to defer and amortize

[42] When combined with an interest calculation and true-up adjustment.
[43] Fortson Rebuttal, Ex. 102, Pages 7-8, Lines 18-23, 1.
[44] Fortson Rebuttal, Ex. 102, Pages 12-13, Lines 15-21, 1-3.
[45] Fortson Rebuttal, Ex. 102, Page 13, Lines 16-19.

the costs over a specified period of time. An AAO is merely a deferral mechanism that permits the deferral of costs from one period to another. Deferred costs are booked as assets rather than expenses, and the Commission determines in a future rate case what deferred costs, if any, may be recovered in rates.[46]

35. Recovery through an AAO, if granted, would amortize extraordinary costs, including carrying costs, in the revenue requirement calculations in a future rate case filing where the Commission could allow those costs to be recovered over a specified period of time.[47] Staff would likely recommend at least a 15-year amortization period, with carrying costs calculated at the company's long-term debt rate.[48]Due to the extraordinary amount of the fuel and purchased power it incurred in February 2021 resulting from Winter Storm Uri, Evergy West sought to defer the fuel and purchased power costs associated with this event to an AAO for consideration in a future rate case in File No. EU-2021-0283. That AAO case is still pending, but Evergy West would not need to defer any costs in that case if it moves ahead with securitization under this Financing Order.[49]

36. If an AAO was established, Staff would not recommend deferral or recovery of the five percent of the utility's share of fuel and purchased power costs under the FAC. Staff contends that not allowing recovery of the five percent of the fuel and purchased power costs represents an appropriate sharing of the financial impacts of Winter Storm Uri between ratepayers and shareholders.[50]

[46] Bolin Rebuttal, Ex. 100, Page 5, Lines 11-16.
[47] Klote Direct, Ex. 11, Page 9, Lines 10-14.
[48] Bolin Rebuttal, Ex. 100, Page 7, Lines 1-11.
[49] Bolin Rebuttal, Ex. 100, Pages 5-6, Lines 7-16, 1-21.
[50] Bolin Rebuttal, Ex. 100, Page 8, Lines 2-9.

37. Applying the same sharing incentive for Winter Storm Uri costs will give Evergy West an incentive to plan for and to efficiently manage extraordinary events that impact fuel and purchased power, which are its biggest costs.[51]

38. Staff proposes a disallowance of $14,771,657.61, which is 5 percent of the total deferred fuel and purchased power costs for Winter Storm Uri, excluding non-fuel operation and maintenance costs, after applying the Missouri jurisdictional factor and retail energy allocator.[52]

Conclusions of Law

K. Section 386.266.1, RSMo allows an electrical corporation to apply to the Commission to approve rate schedules that allow for "periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs." That section also allows the Commission to "include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities." The 95/5 sharing provision in Evergy West's FAC tariff is designed to provide such an incentive.

L. In its report and order that initially established Evergy West's FAC, the Commission found that "a prudence review can be expected to evaluate the major decisions a utility makes. However, a utility makes thousands of small decisions every hour regarding fuel, purchased power, and off-system sales. It is not practical to expect a prudence review to uncover and evaluate every one of those decisions."[53]

[51] Mantle Rebuttal, Ex. 201, Page 27, Lines 16-20.
[52] Fortson Rebuttal, Ex. 102, Page 8, Lines 1-5.
[53] *In the Matter of The Empire District Electric Company's Tariffs to Increase Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, 17, Mo. P.S.C. 631, 667 (2008)

M. Commission Rule 20 CSR 4240-20.090(8)(A)2.A(XI) provides that extraordinary costs are not to be passed through the company's FAC.

N. The securitization statute, Section 393.1700.2(3)(c) requires a financing order issued by the Commission to include all of the following elements:

> a. The amount of securitized utility tariff costs to be financed using securitized utility tariff bonds *and a finding that recovery of such costs is just and reasonable and in the public interest*. The commission shall describe and estimate the amount of financing costs that may be recovered through securitized utility tariff charges and specify the period over which securitized utility tariff costs and financing costs may be recovered;
> b. *A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds.* Notwithstanding any provisions of this section to the contrary, in considering whether to find the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest, the commission may consider previous instances where it has issued financing orders to the petitioning electrical corporation and such electrical corporation has previously issued securitized utility tariff bonds; …
> (emphasis added)

There are two important provisions of this section of the statute that should be noted. First, the section explicitly requires the Commission to determine that the imposition and collection of the utility tariff charge that will result from the securitization of these costs will be just and reasonable and in the public interest. Second, in making its determination as to whether the securitization of these costs is just and reasonable and in the public interest, the Commission is directed to compare the results of the securitization to the results of a recovery of those costs using traditional (non-securitization) methods.

O. Evergy West asserts that it has a general right to recover all prudently incurred costs. The Missouri Supreme Court has found otherwise. In a 2021 case, *Spire*

Missouri, Inc. v. Public Service Commission,[54] Spire Missouri challenged the Commission's decision to disallow a portion of the company's prudently incurred cost of pursuing its general rate case. In upholding the Commission's decision, the Supreme Court said:

> In terms of their reasonableness, these expenditures were entitled to a presumption of prudence, and the ***prudence*** of the expenditures was never called into question. Nonetheless, the PSC concluded that including all of these expenditures in setting Spire's future rates was not ***just*** because some of the expenses were not fair to ratepayers in that they were incurred to benefit (if anyone) Spire's shareholders. Implicit in Spire's argument is an assertion that it is entitled to recover all prudent expenditures in its rates. This is not so. In setting rates the PSC has broad discretion to include or exclude expenditures to arrive at rates it deems to be 'just and reasonable,' subject, of course, to judicial review that the PSC's conclusions are supported by competent and substantial evidence and not arbitrary, capricious, or an abuse of discretion. (Internal citations omitted. Emphasis in original.)

P. Section 386.266.1, RSMo allows an electrical corporation to apply to the Commission to approve rate schedules that allow for "periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs." That section also allows the Commission to "include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities." The 95/5 sharing provision in Evergy West's FAC tariff is designed to provide such an incentive.

Q. In its Report and Order that initially established Evergy West's FAC, the Commission found that "after-the-fact prudence reviews alone are insufficient to assure Aquila [now Evergy West] will continue to take reasonable steps to keep its fuel and

[54] 618 S.W.3d 225 (Mo. banc 2021).

purchased power costs down, and the easiest way to ensure a utility retains the incentive to keep fuel and purchased power costs down is to not allow a 100 percent pass through of those costs." and "allowing Aquila to pass 95 percent of its prudently incurred fuel and purchased power costs, above those included in its base rates, through its FAC is appropriate. With a 95 percent pass-through, the Commission finds Aquila [now Evergy West] will be protected from extreme fluctuations in fuel and purchased power cost, yet retain a significant incentive to take all reasonable actions to keep its fuel and purchased power costs as low as possible, and still have an opportunity to earn a fair return on its investment."[55]

Decision

Customarily, Evergy West would recover fuel and purchased power costs in excess of those reflected in its base rates through its FAC contained in its tariff, which is where the costs Evergy West seeks to securitize were removed from. Due to the extraordinary nature of the costs for fuel and purchased power attributable to Winter Storm Uri,[56] the Commission permitted Evergy West to remove those costs from its FAC pursuant to Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI). If those costs were to pass through Evergy West's FAC they would be subject to the 95/5 sharing provision. Under that provision Evergy West would be entitled to recover 95 percent of costs for its fuel and purchased power.

Prior to seeking recovery of these costs through securitization, Evergy West sought recovery through an AAO, which would allow Evergy West to defer those costs

[55] File No. ER-2007-0004, Report and Order, Pages 53-54, issued May 17, 2007.
[56] The prudence of Evergy West's decisions relating to Winter Storm Uri are not relevant for this issue, but will be addressed in subsequent issues.

for consideration in a later rate case. An AAO is not the customary method through which fuel and purchased power costs are recovered, but using an AAO to defer costs to a future rate case is another method of cost recovery. Under an AAO the Commission would determine what costs Evergy West would be permitted to defer, and later the Commission would have to determine what amount of costs deferred, if any, Evergy West could recover through rates. Staff has stated that for recovery through an AAO it would also recommend that Evergy West recover only 95 percent of the fuel and purchased power costs for Winter Storm Uri.

In the rate case in which Evergy West's FAC was established, the Commission found that the sharing mechanism was necessary to ensure that Evergy West had sufficient financial incentive and motivation to operate at maximum efficiency. The same financial incentives and motivations apply in the situation facing Evergy West during Winter Storm Uri. Evergy West has presented no compelling reason why it should be entitled to a higher percentage than it would receive under conventional recovery of these costs. Evergy West's primary assertion is that recovery under the Securitization Law does not require a 95/5 sharing mechanism. However, recovery through securitization requires a comparison to recovery absent securitization, which would be through Evergy West's FAC or an AAO. Under the FAC only 95 percent of fuel and purchased power costs would be recoverable, not 100 percent. If an AAO had been utilized instead of the FAC, there would be no guarantee as to the amount that Evergy West would recover or what additional offsets, such as extraordinary revenues, could occur.

Recovery through securitization requires that the costs incurred be qualified extraordinary costs and that those costs are "of an extraordinary nature which would

cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking." Recovery through securitization mitigates those impacts, which is beneficial to Evergy West's customers, but Evergy West receives its recovery of those costs much quicker than it would through customary recovery methods. Evergy Wests seeks to add the additional incentive of recovering an additional five percent beyond what it would normally be entitled to recover.

The Commission finds that allowing Evergy West to use securitization to recover an additional five percent of its fuel and purchased power costs related to Winter Storm Uri, which it would not be permitted to recover under traditional methods of ratemaking, is not just and reasonable, nor is it in the public interest. The Commission also finds that the appropriate method of customary ratemaking absent securitization would be through Evergy West's FAC.

E) What is the appropriate adjustment related to non-fuel operations and maintenance (NFOM) costs?

Findings of Fact

39. As part of the costs attributable to Winter Storm Uri to be recovered through securitization, Evergy West sought to recover NFOM costs.[57] Evergy West's securitization petition included NFOM expenses attributed to Winter Storm Uri estimated at $274,934.[58]

[57] Bolin Rebuttal, Ex. 100, Page 7, Lines 13-16.
[58] File No. EF-2022-0155, Petition for Financing Order Authorizing the Issuance of Securitized Utility Tariff Bonds to Finance Qualified Extraordinary Costs Caused by Winter Storm Uri in February 2021, Page 13.

40. Evergy West incurred NFOM expenses related to Winter Storm Uri for communications, overtime for its employees and payroll taxes on the overtime costs, additional contractor costs, damage claims, and costs for additional materials.[59]

41. Staff did not include Evergy West's NFOM costs for recovery through securitization. Staff has included these costs in Staff's cost of service in Evergy West's currently pending rate case, File No. ER-2022-0130.[60]

42. Evergy West has agreed to remove its request for NFOM costs from the amount to be recovered through securitization and will include them in the revenue requirement in its general rate case.[61]

Conclusions of Law

R. Section 393.1700.1(13) states that qualified extraordinary costs are "not limited to those [costs] related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events."

Decision

Securitization requires that the Commission identify the amount of qualified extraordinary costs, and that recovery of those costs is just and reasonable and in the public interest. NFOM costs that Evergy West sought to recover in its petition are costs that were incurred due to Winter Storm Uri. Staff argues that it has included these costs in Evergy West's currently pending general rate case. Evergy West has changed its position from its petition and now agrees that those costs should be addressed within its pending rate case. The Commission finds that because these costs are being recovered

[59] Klote Direct, Ex. 11, Page 10, Lines 15-21, and Schedule RAK-1.
[60] Bolin Rebuttal, Ex. 100, Page 7, Lines 13-20.
[61] Klote Surrebuttal, Ex. 12, page 6, Lines 2-6.

through Evergy West's rate case, additional recovery through securitization is not just and reasonable or in the public interest.

F) Should Evergy West's recovery through securitized bonds reflect an offset based on certain higher than normal customer revenues received by Evergy West during Winter Storm Uri?

Findings of Fact

43. During Winter Storm Uri, Evergy West sold more electricity than it would have sold during a normal February. Staff determined the amount of baseline retail revenues that exceeded Evergy West's three-year average for February 2021 to be $8,612,108 in "excess" revenue. Staff proposes to use this amount of "excess" revenue to partially offset the "qualified extraordinary costs" incurred by Evergy West.[62]

44. Evergy West's $8.6 million in revenues attributable to Winter Storm Uri are approximately 1.1 percent of its normal annual base retail revenues. In contrast, the fuel and purchased power incurred in two weeks from Winter Storm Uri are about one year's worth of fuel and purchased power.[63]

45. Evergy West's earnings for 2021 overall resulted in a return on equity (ROE) well below the ROE assumed from its last rate case. Consequently, in 2021 Evergy West did not recover its costs to provide service and a sufficient return on capital to investors. There were no excess revenues in 2021.[64]

[62] Lange Rebuttal, Ex. 108, Page 33, Lines 11-16. *See also,* McMellen Rebuttal, Ex. 100, Page 5, Lines 12-17.
[63] Ives Surrebuttal, Ex. 9, Page 5, lines 4-8.
[64] Ives Surrebuttal, Ex. 6, Pages 5-6, Lines 20, 2.

Conclusions of Law

S. Section 393.1700.1(13) RSMo, allows for the recovery of costs through securitization that are prudently incurred during an anomalous weather event, and of an extraordinary nature.

Decision

Staff seeks to reduce the securitized amount by offsetting approximately $8.6 million in revenues attributable to Winter Storm Uri that Evergy West received in excess of its average February revenues. Staff proposes that allowing Evergy West to retain these revenues is not just and reasonable and in the public interest. The Securitization Law defines what is included as a qualified extraordinary cost and that definition does not include any offset of those costs for revenues.

This argument is similar to Evergy West's argument that it should receive 100 percent of fuel and purchased power costs attributable to Winter Storm Uri, instead of the 95 percent it would have received through customary treatment of those costs. Staff's argument to reduce the qualified extraordinary cost amount by offsetting that amount against "excess" revenue Evergy West earned as a result of Winter Storm Uri is rejected for the same reason the Commission rejected Evergy West's argument for 100 percent recovery of costs.

Under traditional ratemaking there is no revenue adjustment for the effect of past weather, and no adjustment is made to reduce rates to retroactively recover "excess" revenue. Likewise, Evergy West could not increase rates to make up for a shortfall from events such as an unseasonably cool summer. Those fluctuations are addressed over

time in the ratemaking process by normalizing the effect of those weather fluctuations in the company's rates.

Section 393.1700.1(13) RSMo, allows for the recovery of prudently incurred costs. Staff makes no assertion that Evergy West's fuel and purchased power costs were imprudent but seeks to offset those costs based upon Evergy West having higher than normal baseline revenues for February 2021. The revenues collected from customers through rates include the entire revenue requirement, all cost-of-service expenses and a return on rate base. Considering that Evergy West failed to meet its assumed rate of return for 2021, there is no showing by Staff that the higher than normal revenues from February 2021 were in fact "excess" revenue. Staff's request to recover revenue is both not authorized by the Securitization Law, and is also not based in traditional ratemaking. The Commission does not find Staff's proposal to be just and reasonable, and will not order a reduction or offset of qualified extraordinary costs for higher than normal revenues.

G) Should Evergy West's recovery through securitized bonds reflect a disallowance based on Evergy West's resource planning?

H) Were the costs incurred by Evergy West related to Winter Storm Uri as a result of its resource planning process just and reasonable?

a. If no, should Evergy West's recovery through securitized bonds reflect a disallowance?

b. If yes, what amount should the Commission disallow?

The Commission will address these sub-issues together.

Findings of Fact

46. Public Counsel asserts that Evergy West's resource planning is imprudent because it does not have enough generation resources to meet the energy requirements

of its customers, and the company is relying on the energy from other utilities in the SPP to meet its customers' needs.[65] Public Counsel alleges that Evergy West's retirement of its Sibley power plant and subsequent procurement of capacity from Evergy Missouri Metro (Evergy Metro) was imprudent.[66]

47. Prior to Winter Storm Uri, customers did not see an increased cost due to the implementation of Evergy West's alleged imprudent resource planning decisions.[67]

48. Capacity is the maximum output an electricity generator can physically produce, measured in megawatts. Energy is the amount of electricity a generator produces over a defined period of time.[68]

49. Having enough capacity is essential to having enough energy to meet customers' load requirements. However, having enough capacity does not necessarily ensure that energy will be available when it is needed. For instance, Evergy West does not have enough generation capacity through its owned resources and entered into purchased power agreements to meet the SPP resource adequacy standards. It can only meet the SPP resource adequacy standards when combined with Evergy Metro.[69]

50. Evergy West sells all of the energy it generates into the SPP Integrated Marketplace and purchases all the energy necessary to serve its native load customers from the SPP.[70]

[65] Mantle Rebuttal, Ex. 201, Page 9, Lines 3-6.
[66] Messamore Surrebuttal, Ex. 17, Page 9, Lines 11-15.
[67] Mantle Rebuttal, Ex. 201, Page 9, Lines 6-8.
[68] Mantle Rebuttal, Ex. 201, Page 11, Lines 22-24.
[69] Mantle Rebuttal, Ex. 201, Page 12, Lines 1-8.
[70] Bridson Direct, Ex. 1, Page 6, Lines 7-10.

51. Evergy Metro and Evergy West report capacity to SPP as a combined entity.[71]

52. Evergy West has sufficient capacity to meet its SPP resource adequacy requirements and reserve margin as a standalone entity, though some of Evergy West's capacity comes from a contract with Evergy Metro.[72]

53. Utilities that are members of a RTO commonly rely on market purchases as one source of generation in their portfolio.[73]

54. Evergy West completes and files an Integrated Resource Plan (IRP) every three years, with annual updates in intervening years, as outlined in the IRP rules in 20 CSR 4240-22.[74]

55. It is not possible for an electric utility to accurately plan for all extreme circumstances.[75]

56. Evergy West identified Sibley Unit 3 (Sibley), a coal fired plant, for retirement in its 2017 IRP annual update. Evergy West modeled Sibley's retirement plan and a purchased power agreement over 18 scenarios, and in every scenario Sibley's retirement was more economic than its continued operation.[76]

57. Evergy West's decision to retire the Sibley plant was consistent with a local and nationwide trend. At the time Evergy West decided to retire Sibley, there was a drop in coal-fired generation, and that drop is expected to continue.[77]

[71] Messamore Surrebuttal, Ex. 17, Page 8, Lines 4-8.
[72] Messamore Surrebuttal, Ex. 17, Page 8, Lines 11-13.
[73] Reed Surrebuttal, Ex. 18, Page 18, Lines 13-14.
[74] Messamore Surebuttal, Ex. 17, Page 4, Lines 13-14.
[75] Mantle Rebuttal, Ex. 201, Page 10, Line 25.
[76] Messamore Surrebuttal, Ex. 17, Page 10, Lines 11-13.
[77] Kennedy Surrebuttal, Page 8, Line 8-11.

Conclusions of Law

T. The Commission's electric utility resource planning rule, 20 CSR 4240-22.010(2) states in part:

> The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies. …

U. Section 393.1700.1(13), RSMo, requires that qualified extraordinary costs be prudently incurred.

V. The Commission's standard for assessing whether conduct was prudent considers whether the conduct was prudent at the time the utility had to solve a problem. The Commission's prudence standard does not rely on hindsight.[78]

Decision

Public Counsel has alleged that Evergy West was imprudent in its resource planning, and that because of its imprudent resource planning, the amount of qualified extraordinary costs should be reduced. The Securitization Law allows for recovery of qualified extraordinary "costs incurred prudently before, on, or after August 28, 2021." Public Counsel asks the Commission to reduce the amount of qualified extraordinary costs for Winter Storm Uri based upon the prudence of decisions made years prior to Winter Storm Uri. Public Counsel proposes that, but for Evergy West's resource planning decisions, Winter Storm Uri costs would have been mitigated. However, Public Counsel did not demonstrate that at the time those decisions were made the costs from Winter Storm Uri were foreseeable. Public Counsel asks the Commission to examine whether

[78] File No. EO-85-17, In the matter of the determination of in-service criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway rate base and related issues, page 13.

Evergy West's decision to retire Sibley without replacing it was prudent and whether Evergy West's resource planning, more specifically its reliance on Evergy Metro to meet its SPP capacity requirement, was prudent. Public Counsel offers its own previous concerns about Evergy West's resource planning as its primary evidence of imprudence.

Public Counsel made the same argument in File No. EO-2022-0040, involving Liberty, who is also a member of SPP. In that case Liberty sought to securitize costs incurred from Winter Storm Uri. The Commission in its Amended Report and Order addressed Public Counsels argument, in part, as follows:

> No doubt, if Liberty had more capacity available to sell into the SPP market during Winter Storm Uri, it could have earned enough from those sales to offset the fuel costs that it now seeks to securitize. But that fact is entirely based on perfect hindsight. Liberty planned to have sufficient capacity to meet all requirements established by SPP. Other than showing a bad result, Public Counsel has not demonstrated any imprudence in Liberty's planning process.[79]

The Commission's analysis in Liberty's securitization case is equally applicable here. Public Counsel's witness correctly states that there is no way to accurately plan for all extreme circumstances. If Sibley had not been retired, or had been replaced with alternative generation, it might have mitigated some of the costs from Winter Storm Uri, but customers would not have received any economic benefits from retiring Sibley. Additionally, there is no accurate way to quantify the amount of Winter Storm Uri costs would have been mitigated. That Evergy West chose to reduce foreseeable costs by

[79] File No. EO-2022-0040, Amended Report and Order, at page 33, issued September 22, 2022.

retiring Sibley as opposed to the unforeseeable costs resulting from Winter Storm Uri is further support for its decision being prudent.

Evergy West provided sufficient evidence to determine that its resource planning, including its decision to retire Sibley, was reasonable at the time those decisions were made. Evergy West's resource planning resulted in it meeting its SPP resource adequacy requirements. Evergy West presented evidence that it considered multiple scenarios when deciding whether to retire its Sibley Generator, and from the results of that analysis determined that it was economically beneficial to ratepayers to do so. The Commission disagrees with Public Counsel's assessment that Evergy West's resource planning was imprudent. The Commission will not reduce the qualified extraordinary cost amount based upon Evergy West's resource planning.

I) Should Evergy West's recovery through securitized bonds reflect a disallowance for income tax deductions for Winter Storm Uri costs?

J) Should Evergy West's recovery through securitized bonds reflect a disallowance for the income tax deduction on the carrying costs for Winter Storm Uri costs?

The Commission will address these sub-issues together.

Findings of Fact

58. Evergy West is a member of a consolidated tax group, Evergy Inc.[80]

59. Evergy West was permitted a tax deduction when the Winter Storm Uri costs were incurred.[81]

[80] Riley Surrebuttal, Ex. 206, Page 3, footnote 3.
[81] Hardesty Surrebuttal, Page 3, Lines 4-5.

60. Evergy West did not take a tax deduction for Winter Storm Uri costs for book purposes and this created a timing difference. The deferred taxes were recorded on Evergy West's books as a liability. [82]

61. The SUTC will be listed as a separate line item on customers' bills.[83]

62. The deferred tax liability recorded by Evergy West allows for the tax benefits associated with Storm Uri to be given to customers in future general rate cases over the life of the securitized bond.[84]

63. The revenue collected from customers to repay the bonds will be taxable and the SPE will have to pay tax on those revenues. The SPE will not be entitled to a tax deduction for the Winter Storm Uri costs since they were already deducted by Evergy West.[85] The SPE will file a tax return as part of the consolidated income tax return filed by Evergy Inc.[86]

64. Public Counsel asserts that Evergy West expects to claim a one-time tax deduction of approximately $72.2 million on its 2021 consolidated income tax return for fuel and purchased power costs incurred during Winter Storm Uri,[87] and that without a reduction in the proposed securitization amount to recognize this tax reduction, only Evergy West will benefit.

65. Public Counsel contends that ratepayers will pay for Evergy West's tax write-off of $72.2 million, which will cost them $135 million over the 15-year term of

[82] Transcript, Page 229, Lines 4-21.
[83] Riley Rebuttal, Ex. 205, Page 7, Lines 1-2.
[84] Bolin Surrebuttal, Ex. 101, Page 4, Lines 15-18.
[85] Hardesty Surrebuttal, Page 3, Lines 5-8.
[86] Bolin Surrebuttal, Ex. 101, Page 4, Lines 20-21.
[87] Riley Surrebuttal, Ex. 206, Page 3, Lines 9-11.

securitization.[88] Public Counsel argues this tax benefit should be recognized as a reduction in the securitization amount.[89]

66. Public Counsel states that when securitization is implemented, taxes will be applied to the line item that ratepayers will see on their monthly bill, the revenues from which are for the securitization bond repayment, and these taxes will be the responsibility of the ratepayer and not the Company.[90] This is incorrect. Income taxes applicable to revenues collected from customers were not included in the calculation of the securitization amount by Staff or Evergy.[91]

67. In a rate case, the amount of taxes associated with the revenue the company collects is included in the base rates. There is no separate line item on a customer's bill for federal or state income taxes, which the company will have to pay.[92]

68. Public Counsel, when comparing the income taxes collected as part of an FAC to income taxes collected with securitization,[93] neglected to include the taxation of the revenues at the SPE. Once you include the taxes on the SPE, there is no difference between recovering the Winter Storm Uri costs through the FAC or through the securitization financing. There is no difference in the tax amount and no benefit to Evergy West.[94]

69. Public Counsel contends that taxes on the carrying costs will be spread over Evergy West's 2021 and 2022 income tax returns.[95]

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[88] Riley Surrebuttal, Ex. 206, Pages 3-4, Lines 22, 1.
[89] Riley Surrebuttal, Ex. 206, Page 3, Lines 11-12.
[90] Riley Rebuttal, Ex. 205, Page 5, Lines 15-18.
[91] Bolin Surrebuttal, Ex. 101, Page 3, Lines 13-17.
[92] Bolin Surrebuttal, Ex. 101, Page 3, Lines16-19.
[93] Riley Rebuttal, Ex. 205, Page 4, Lines 11-12.
[94] Hardesty Surrebuttal, Ex. 5, Pages 3-4, Lines 9, 1.
[95] Riley Surrebuttal, Ex. 206, Page 4, Lines 8-9.

70. The SUTC will be excluded from Evergy West's revenues in a general rate case for calculating the cost of service.[96]

71. Evergy West is not taxed when the securitization bonds are issued.[97] Internal Revenue Service (IRS) Revenue Procedure 2005-62 at .03 states that Evergy West does not have to recognize the income upon the issuance of the bonds or the receipt of the cash but does have to recognize the income as the nonbypassable charges are incurred or put on the customers' bills.[98]

72. IRS Revenue Procedure 2005-62 provides a safe harbor for public utility companies that, pursuant to specified cost recovery legislation, receive an irrevocable financing order permitting the utility to recover certain specified costs through a qualifying securitization. Under this revenue procedure, Evergy West will not recognize taxable income upon the receipt of the financing order, the transfer of Evergy West's rights under the Financing Order to the SPE, or the receipt of cash in exchange for the issuance of the Securitization Bonds. Evergy West will treat the SUTC as gross income to Evergy West.[99]

73. Any tax benefits associated with the Winter Storm Uri costs will be given to customers in future general rate cases over the life of the securitized bond. To include those benefits directly in the SUTC would double-count those benefits.[100]

74. The deferred taxes will be included in rate base until all the Winter Storm Uri costs are collected through the securitization financing.[101] The revenues collected

[96] Bolin Surrebuttal, Ex. 101, Page 4, Lines 2-3.
[97] Hardesty Surrebuttal, Page 3, Lines 3-4.
[98] Transcript, Page 238, Lines 14-18.
[99] Humphrey Direct, Ex. 6, Pages 15-16, Lines 16-23, 1-2.
[100] Bolin Surrebuttal, Ex. 101, Page 4, Lines 15-18
[101] Hardesty Surrebuttal, Ex. 5, Page 4, Lines 7-11.

from Evergy West customers through the nonbypassable charge will be taxed to Evergy Inc. in its consolidated tax returns. Evergy Inc. is the parent company of Evergy West.[102]

Conclusions of Law

W. IRS Revenue Procedure 2005-62 states in part:

> SECTION 6. APPLICATION
>
> .01 The utility will be treated as not recognizing gross income upon
>
> > (1) The receipt of a financing order that creates an intangible property right in the amount of the specified costs that may be recovered through securitization;
> >
> > (2) The receipt of cash or other valuable consideration in exchange for the transfer of that property right to a financing entity that is wholly owned, directly or indirectly, by the utility; or
> >
> > (3) The receipt of cash or other valuable consideration in exchange for securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility.
>
> .02 The securitized instruments described in Section 5.04 will be treated as obligations of the utility.
>
> .03 The nonbypassable charges are gross income to the utility recognized under the utility's usual method of accounting.

X. Section 393.1700.2(3)(c)k, RSMo. requires that this order provide for a reconciliation process that would require Evergy West to account for any potential tax benefits that may lower its actual securitized utility tariff costs associated with Winter Storm Uri through a future rate case.

[102] Transcript, Pages 335-336.

Decision

Public Counsel asks the Commission to reduce the securitized amount for tax deductions it says Evergy West will get for Winter Storm Uri costs, and also for a tax deduction on the carrying costs for Winter Storm Uri. Pursuant to IRS Revenue Procedure 2005-62, Evergy West does not have to recognize money received from the SPE pursuant to the financing order and the transfer of the deferred tax liability for costs expended due to Winter Storm Uri for income tax purposes. However, that does not mean that the revenues collected that typically offset the tax deduction related to fuel and purchased power costs (Winter Storm Uri costs) will not be recognized in future Evergy West rate cases. All revenues collected from Evergy West customers as part of the SUTC will be taxed in the tax periods received or recognized. Those amounts will be accounted for in Evergy Inc.'s consolidated tax returns. The deferred tax liability booked, associated with the Winter Storm Uri costs that resulted in a tax deduction in 2021 will be reduced as a debit to Evergy West's rate base over the life of the securitization bonds corresponding to the income tax periods in which the revenues are recognized.

Additionally, the Securitization Law, at Section 393.1700.2(3)(c)k, RSMo., requires that this Financing Order provide for a reconciliation process to account for any potential tax benefits in a future rate case. Therefore, there is no need to disallow an uncertain tax amount now, when more information regarding what, if any, tax benefits Evergy West receives will be available and will be reconciled in a future rate case. Accordingly, the Commission will not reduce the securitized amount for tax deductions related to Winter Storm Uri costs, or carrying costs.

K) What are the appropriate carrying costs for Winter Storm Uri?

Findings of Fact

75. Evergy West incurred Winter Storm Uri costs in February, 2021, but has not yet recovered those costs from its customers. The Securitization Law allows Evergy West to securitize and recover carrying costs. Evergy West seeks carrying costs on the entire amount of qualified extraordinary costs through the proposed issuance date of the securitization bonds of January 2023.[103] Evergy West contends those carrying costs should be calculated using Evergy West's assumed WACC of 7.358 percent, plus taxes.[104] The WACC plus applicable taxes Evergy West used in this proceeding is 8.9 percent.[105] Evergy West assumes this WACC from the stipulation and agreement in Evergy West's last general rate case, File No. ER-2018-0146, but that stipulation was silent as to specific components that determine the WACC.[106]

76. Evergy West has been carrying Winter Storm Uri costs using short-term debt.[107]

77. Public Counsel proposes using Evergy West's average cost of short-term debt for carrying costs, compounded monthly.[108]

78. Short-term debt balances fluctuate and are heavily influenced by factors including operations, working capital needs, market conditions and special circumstances

[103] Klote Direct, Ex. 11, Page 7, Lines 15-16.
[104] Klote Direct, Ex. 11, Page 10, Lines 4-5.
[105] Klote Direct, Ex. 11, Page 14, Lines 7-9.
[106] Murray Rebuttal, Ex. 203, Page 3, Lines 6-16.
[107] Transcript, Page 495, Lines 13-19
[108] Murray Rebuttal, Ex. 203, Page 2, Lines 6-8.

like Winter Storm Uri. Short-term debt is used as bridge financing by Evergy West until it can close on long-term debt financing. [109]

79. Staff agrees that Evergy West should be allowed to recover carrying costs for Winter Storm Uri, but contends those carrying costs should be calculated using Evergy West's long-term debt rate of 5.06 percent from File No. ER-2018-0146.[110]

80. In Evergy West's current rate case, File No. ER-2022-0130, Evergy West estimated its embedded cost of long-term debt at 3.787 percent, as of May 31, 2022.[111] However, as of the issuance of this financing order, the Commission has not issued its report and order in that rate case.

81. Applying Evergy West's long-term debt rate shares the cost of extraordinary events between ratepayers and shareholders. Whereas applying Evergy's WACC insulates Evergy West from risk from an unanticipated event like Winter Storm Uri, and places more risk on ratepayers.[112]

82. Public Counsel contends that carrying costs should not be recovered at Evergy West's long-term cost of debt because Evergy West anticipates carrying Winter Storm Uri extraordinary costs for less than two years.[113] Public Counsel also asserts that Evergy West's long term debt rate is inappropriate because it is premised on Evergy West's cost of long-term debt from June 30, 2018.[114]

[109] Reed Surrebuttal, Ex. 18, Page 28-29, Lines 19-23, 1-5.
[110] Bolin Rebuttal, Ex. 100, Page 4, Lines 3-6.
[111] Murray Surrebuttal, Ex. 204, Page 3, Lines 16-18.
[112] Bolin Rebuttal, Ex. 100, Page 7, Lines 8-11.
[113] Murray Rebuttal, Ex. 203, Page 5, Lines 6-14.
[114] Murray Surrebuttal, Ex. 204, Page 2, Lines 18-19.

83. For accounting purposes, an obligation longer than 364 days is typically considered long-term.[115] Using Evergy West's long-term debt rate to determine carrying costs is more appropriate than using Evergy West's short-term debt rate, because more than a year has elapsed since Winter Storm Uri.[116] Evergy West has been carrying the Winter Storm Uri costs on its books since February 2021.

84. Evergy West's Commission-approved long-term debt rate is more appropriate to use than the WACC because this securitization addresses fuel and purchased power costs, not capital costs normally included in rate base, such as plant.[117]

85. The amount of carrying costs calculated by Staff's financial expert, Mark Davis, using Evergy West's long-term debt rate of 5.06 percent multiplies what it describes as the amount of normal deferral by the interim carrying cost divided by 12 for each month since February 2021.[118]

Conclusions of Law

Y. Section 393.1700.1(13), which defines "qualified extraordinary costs" for purposes of the securitization statute, specifically states that such costs include carrying charges. The statute does not further define carrying charges, nor clarify how they are to be calculated.

[115] Murray Rebuttal, Ex. 203, Page 9, Lines 3-5.
[116] Bolin Rebuttal, Ex. 100, Page 11, Lines 3-5.
[117] Bolin Rebuttal, Ex. 100, Page 7, Lines 6-8. Staff is discussing what its recommended carrying cost recovery rate would be for an AAO, but the same reasoning applies to securitization.
[118] Davis Confidential Workpapers, Ex. 107C, Ducera 15 Yr Sec and Ducera 20 Yr Sec tabs.

Decision

The Commission believes that Staff's proposal and method to calculate carrying costs for Winter Storm Uri related costs at Evergy West's long-term debt rate of 5.06 percent is most appropriate because the costs to be securitized are not capital costs. Further, the use of the long-term debt rate shares the risks of extraordinary events between Evergy West and its ratepayers. Public Counsel's proposal to use short-term debt rates for the purposes of calculating carrying costs is inappropriate as the term to which the short-term debt rate, compounded monthly, would be applied is a period greater than 364 days and closer to two years.

L) What is the appropriate adjustment to the amount of Winter Storm Uri costs to be recovered through securitized bonds, if any, regarding Evergy West's administration of the Special Incremental Load (SIL) tariff?

Findings of Fact

86. Staff proposes disallowing $1,231,553,[119] prior to applying any jurisdictional allocation, from the securitization amount related to the implementation of the SIL tariff.

87. The Commission approved Evergy West's SIL tariff in File No. EO-2019-0244.[120] The purpose of the SIL tariff is to provide customers who smelt aluminum and primary metals, produce or fabricate steel, or operate a facility in excess of a monthly demand of 50 megawatts, with a rate not based on Evergy West's cost of service, but that is designed to recover no less than the incremental costs of serving the new load.[121]

[119] Transcript, Page 303, Line 3, corrected amount.
[120] Luebbert Rebuttal, Ex. 105, Page 2, Footnote 1.
[121] Luebbert Rebuttal, Ex. 105, Pages 5-6, Lines 21-23, 1-8.

88. Nucor is engaged in the manufacture of steel and steel products. It constructed a "micro mill" in Sedalia, Missouri, which utilizes an electric arc furnace to recycle scrap steel into steel rebar.[122]

89. Nucor receives electric service from Evergy West through the SIL Rate Contract and Schedule SIL-1, which contains rates specific to Nucor's service.[123]

90. As part of the *Non-Unanimous Stipulation and Agreement* in File No. EO-2019-0244, (Nucor Stipulation) Evergy West agreed to identify and isolate costs attributable to providing service to Nucor. Evergy West also agreed to modify its FAC accounting to ensure Nucor related costs are not included in the FAC customer charge.[124] Evergy West did not identify Customer Event Balancing events, quantify the cost impacts of the events, or remove those costs from its securitization request.[125]

91. Evergy West did not determine or estimate the next-day Nucor hourly load from which cost impacts on non-Nucor ratepayers could be determined. As a result of not quantifying those events additional costs were included in Evergy West's securitization request, which it agreed to remove prior to non-Nucor ratepayer recovery.[126]

92. Staff contends that Evergy West's imprudent implementation of the Schedule SIL tariff in combination with the Nucor Stipulation resulted in additional costs to non-Nucor ratepayers through Evergy West's FAC that were subsequently included in Evergy West's securitization request.

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[122] Luebbert Rebuttal, Ex. 105, Page 5, Lines 14-18.
[123] Luebbert Rebuttal, Ex. 105, Page 5, Lines 20-21.
[124] Luebbert Rebuttal, Ex. 105, Schedule JL-r2, *Non-Unanimous Stipulation and Agreement*, EO-2019-0244, Pages 3-4.
[125] Luebbert Rebuttal, Ex. 105, Page 4, Lines 3-7.
[126] Luebbert Rebuttal, Ex. 105, Page 4, Lines 7-12.

93. Staff raised the concerns related to treatment of the incremental costs to serve Nucor on May 12, 2022 in a Staff filed complaint in File No. EC-2022-0315.[127]

94. An exact quantification of an amount necessary to insulate non-Nucor ratepayers is problematic, because Evergy West has not retained the data necessary to determine the hours in which payments were due.[128]

95. Pursuant to the Nucor Stipulation, Evergy West agreed to hold non-Nucor customers harmless from any deficit in revenues caused by customers served under the SIL tariff.[129]

96. Evergy West contends that no costs have been purposely or inadvertently passed to other customers.[130]

97. Nucor has a highly variable load factor and its variations can undermine advance load planning, including hour to hour planning.[131] Staff used a range of static value to represent the Nucor load, which is not based on Nucor operations.[132]

98. Evergy West's day-ahead commitments included provisions for Nucor based on Nucor's previous years load. A portion of Evergy West's load forecast includes the Nucor load, and Evergy West can conservatively estimate that Nucor's load from 365 days prior to the operating day is included in the Evergy West load forecast, adjusted for Nucor starting operations in March 2020.[133]

[127] Luebbert Rebuttal, Ex. 105, Page 14, Lines 12-15
[128] Luebbert Rebuttal, Ex. 105, Page 3, Lines 13-16.
[129] Luebbert Rebuttal, Ex. 105, Page 6, Lines 12-13.
[130] Lutz Surrebuttal, Ex. 16, Page 16, Lines 1-3.
[131] Lutz Surrebuttal, Ex. 16, Page 12, Lines 1-15.
[132] Carlson Surrebuttal, Ex. 2, Page 3, Lines 12-17.
[133] Carlson Surrebuttal, Ex. 2, Page 5, Lines 1-12.

99. At the time of development of the SIL tariff and the stipulation, Evergy West was unaware of the difficulty in obtaining Nucor load projections appropriate for daily forecasting.[134]

100. Evergy West's analysis concludes that Nucor's load did not negatively impact non-Nucor ratepayers. It was more beneficial to purchase all of Nucor's load in the real time market, as opposed to the day ahead market in February 2021.[135]

Conclusions of Law

Z. Section 393.1700.1 (19), RSMo, defines a special contract as an electrical service provided under the terms of a special incremental load rate schedule at a fixed price rate approved by the commission.

AA. Section 393.1700.1 (16), RSMo, excludes from the definition of SUTC customers receiving electrical service under special contracts as of August 28, 2021, who are not subject to the securitized utility tariff charge.

Decision

Staff asks the Commission to reduce the qualified extraordinary costs by approximately $1.2 million for Evergy West's imprudent implementation of the SIL tariff.

Evergy West asserts that an adjustment to the amount of qualified extraordinary cost for Winter Storm Uri is not warranted because the revenue received from Nucor under the SIL tariff is sufficient to cover its cost of service, and because it was served in the real-time SPP market during Winter Storm Uri. Evergy West also states that Staff's method of calculating the Nucor impact is flawed. Evergy West also asserts that it has already agreed to keep certain records, identify costs, and other items as part of the

[134] Lutz Surrebuttal, Ex. 16, Pages 12-13, Lines 4-15, 1-8.
[135] Carlson Surrebuttal, Ex. 2, Page 6, Lines 8-16.

August 30, 2022, Stipulation and Agreement in File No. ER-2022-0130, which occurred after the evidentiary hearing in this case. Thus, Evergy West argues, there is no support for the Commission to require those conditions in this case.

Staff argues that Evergy West failed to determine or estimate the next day Nucor hourly load for comparison to actual Nucor load to determine ratepayer impacts. Yet, Staff states that there are difficulties in quantifying the impact to non-Nucor customer of serving Nucor's load in February 2021, largely due to a lack of data retention by Evergy West. Staff has filed a complaint against Evergy West in File No. EC-2022-0315 for the purpose of addressing any potential violations of the Nucor Stipulation.

Nucor is currently the only customer of its kind that Evergy West serves under the SIL tariff. It appears that Evergy West may have underestimated what would be involved with tracking the Nucor load. At this time there is insufficient evidence for the Commission to determine that non-Nucor customers were harmed. There is also insufficient evidence to quantify any potential harm.

Pursuant to the Nucor Stipulation, Evergy West has agreed to hold non-Nucor customers harmless from any deficit in revenues caused by serving the Nucor load. The Commission is unable to determine at this time whether Evergy West's implementation of the SIL tariff was imprudent, and this is not the proper proceeding to determine if Evergy West has violated the Nucor Stipulation. It is appropriate that any determination regarding the Nucor Stipulation be addressed in the complaint proceeding. The hold harmless provision of the Nucor Stipulation will prevent ratepayers from being harmed from any Winter Storm Uri costs from service to Nucor being improperly applied to non-Nucor

customers. Therefore, the Commission will not reduce the qualified extraordinary cost amount for Evergy West's administration of the SIL tariff.

M) What is the appropriate discount rate or rates to use to calculate the net present value of Winter Storm Uri costs that would be recovered through customary ratemaking?

Findings of Fact

101. The Securitization Law requires an analysis of the net present value (NPV) of benefits to customers with and without securitization.[136] The Securitization Law does not define NPV.[137]

102. The discount rate for a NPV analysis is the rate used to discount estimated future cash flows to the present. The determination of a reasonable discount rate is defined by the risk of the cash flows, the interval of the cash flows, and the term of the cash flows. The appropriate discount rate should be commensurate with the risk and term of the investment.[138]

103. Evergy West analyzed the NPV benefit to customers by comparing securitization to the recovery methods of Evergy West's FAC and deferral under Section 393.1400, RSMo, plant-in-service accounting, and deferral to a regulatory asset through an AAO.[139]

104. Evergy West used its WACC of 8.9 percent for the discount rate in determining the NPV benefit to customers for securitization when compared to customary ratemaking.[140] Evergy West contends that this is the correct rate because it committed

[136] Section 393.1700.2(3)(c)b RSMo.
[137] Murray Rebuttal, Ex. 203, Page 11, Lines 19-20.
[138] Murray Rebuttal, Ex. 203, Page 12, Lines 6-13.
[139] Klote Surrebuttal, Ex. 12, Page 3, Lines 7-19.
[140] Klote Surrebuttal, Ex. 12, Page 15, Lines 1-6, and Confidential Schedule RAK-8.

capital to funding the deferred fuel cost collections that are the subject of this securitization, and that warrants a reasonable return until such time as that capital is paid off by the proceeds from securitization.[141]

105. Evergy West analyzed NPV outcomes for Securitization, the FAC, and a 15-year amortization, using the same 8.9 percent discount rate.[142]

106. Staff's expert financial witness, Mark Davis' analysis compares a discount rate range of 5.06 percent and 8.9 percent for customary ratemaking. Staff analyzed NPV outcomes for securitization, the FAC, and deferral through an AAO, using the same discount rate range of 5.06 percent to 8.9 percent.[143]

107. Public Counsel's analysis used a different discount rate for securitization than it applied to customary methods of ratemaking to yield its NPV calculations.[144] This is different than how both Staff and Evergy's financial experts analyzed NPV for securitization when compared to customary ratemaking.

108. Use of Evergy West's short-term debt rate is inappropriate because the amount of time Evergy's capital will be deployed exceeds one year.[145]

Conclusions of Law

BB. Section 393.1700.2(3)(c)b requires that this financing order make a finding that the proposed securitization is expected to "provide quantifiable net present value benefits to customers" as compared to recovery of those costs without the issuance of the securitized bonds. In order to make that comparison, the Commission must determine

[141] Reed Surrebuttal, Ex. 18, Page 7, Lines 14-26.
[142] Klote Surrebuttal, Ex. 12, Confidential Schedule RAK-8.
[143] Davis Rebuttal, Ex.106, Page 6 Line 20 through Page 7, Line 5; and Confidential workpapers of expert witness Davis, Ex. 107C.
[144] Murray Rebuttal, Ex. 203, Page 13, Lines 3-21.
[145] Reed Surrebuttal, Ex. 18, Page 7, Lines 22-24.

the appropriate discount rate to be used in the calculations of the amounts that would be recovered without securitization.

CC. Section 393.1700.2(2)(e), RSMo, requires Evergy West to provide a comparison between the NPV of the cost to customers that is estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the customary method of financing; and reflecting the qualified extraordinary costs in retail customer rates. The comparison must show that securitization would provide a quantifiable NPV benefit to customers.

Decision

This issue simply asks what discount rate should be plugged into a formula to determine whether securitization would be a quantifiable NPV benefit to Evergy West's customers. It does not have a direct impact on the amount that Evergy West should be allowed to recover through securitization. The Commission determines the appropriate discount rate to use in calculating the NPV of Winter Storm Uri costs that would be recovered through customary ratemaking is to use Evergy West's long-term debt rate of 5.06 percent.

2) What are the estimated up-front and ongoing financing costs associated with securitizing qualified extraordinary costs associated with Winter Storm Uri?

A) What is the appropriate return on investment and treatment of earnings in the capital subaccount?

B) Is the issuance of multiple series appropriate?

The Commission will address this issue and sub-issues together.

Findings of Fact

109. Up-front and ongoing financing costs of securitization are comprised of a mix of costs that are fixed and less dependent on the size of the transaction, and costs that are variable and tied to the size, length, and execution complexity of the transaction.[146]

110. The up-front financing costs consist of items such as underwriter fees, legal fees, and rating agency fees. The Commission advisor's costs, including Staff's advisors, would also go into the issuance.[147]

111. The ongoing financing costs are amounts that would be collected every period through the SUTC and would include items such as the servicer cost, administrative fees, accounting fees, and ongoing rating agency fees.[148]

112. Evergy West estimates that the up-front financing cost associated with securitizing the Winter Storm Uri costs is $6.6 million ($6,639,758)[149], Evergy West includes $300,000 for Commission advisors.[150] Evergy West estimated the ongoing financing costs to be approximately $560,000 per year. [151]

113. Staff estimates up-front financing costs to be $6,025,325 plus the Commission's advisor costs.[152] Staff recommends a lower amount of up-front financing

[146] Davis Rebuttal, Ex 106, Page 6, Lines 3-6.
[147] Transcript, Page 483, Lines 17-22. A more complete list of up-front costs is included in confidential Schedule JOH-1 attached to Humphrey's Direct Testimony, Ex. 6.
[148] Transcript, Pages 483-484, Lines 23-25, 1-3. A more complete list of ongoing costs is included in confidential Schedule JOH-1 attached to Humphrey's Direct Testimony, Ex. 6.
[149] Klote Surrebuttal, Ex. 12, Page 14, Table 1.
[150] Transcript, Page 106, Lines 8-11.
[151] Humphrey Direct, Ex. 6, Page 11, Lines 11-17.
[152] Bolin Surrebuttal, Ex. 101, Page 6, Table 1; Exhibit 107C, Davis confidential workpapers, Sheet MD3 Bond Financing Costs; Staff's Proposed Financing Order, Appendix C – Estimated Up-Front Financing Costs Table; and Staff's initial brief (public version) Page 16

than Evergy West due to reallocation of some costs from fixed costs to variable costs and due to an assumption of a lower securitized amount.[153] Evergy West's witness Jason Humphrey examined Staff's workpapers, and is of the opinion that the reduced up-front financing amount may be related to a reduction in Staff's overall securitized amount.[154]

114. Staff estimates the ongoing financing costs to be $508,905 per year. Similar to the estimated up-front financing costs calculation, Staff reallocated some costs from Evergy's estimated ongoing financing costs from fixed costs to variable costs to more appropriately calculate the costs.[155]

115. The issuance advice letter will indicate the pricing, terms, and conditions of the bonds, as well as provide actual amounts for the total up-front financing costs and the best available estimate of total ongoing financing costs.[156]

116. It is customary to include up-front financing costs in the principal amount of securitized utility tariff bonds.[157]

117. IRS rules require Evergy West to contribute an amount equal to 0.5 percent of the initial aggregate principal amount of the Securitization Bonds to the SPE in the form of a capital contribution that the SPE maintains in a capital account.[158]

118. Evergy West asserts that it is entitled to a return on the capital contribution at its authorized WACC, 8.9 percent.[159]

[153] Exhibit 107, Davis confidential workpapers, Sheet MD3 Bond Financing Costs
[154] Humphrey Surrebuttal, Ex. 7, Page 5, Lines 14-23.
[155] Exhibit 107, Davis confidential workpapers, Sheet MD3 Bond Financing Costs
[156] Lunde Direct, Ex. 13, Page 40, Lines 16-18.
[157] Davis Rebuttal, Ex. 106, Page 7, Lines 17-19.
[158] Klote Direct, Ex. 11, Page 22, Lines 7-11.
[159] Klote Direct, Ex. 11, Page 22, Lines 11-14.

119. Staff takes issue with allowing Evergy West to earn a return on investment and earnings in the capital subaccount at 8.9 percent because Evergy West's most recently Commission determined WACC is derived from Evergy West's 2018 rate case, File No. ER-2018-0146. Staff proposes that the Commission use a WACC of 6.77 percent approved as part of ER-2019-0374 for The Empire District Electric Company d/b/a Liberty, as a proxy.[160]

120. It is uncommon for securitization bonds to be issued in multiple series.[161]

121. Evergy contends that multiple series are not expected, but that the financing order should permit the issuance of multiple series to address any future market disruptions.[162]

122. Issuance of securitization bonds in multiple series would likely result in an increased cost of issuance.[163]

Conclusions of Law

DD. Section 393.1700.2(3)(c)a, RSMo, requires the Commission to include in a financing order a description and estimate of the amount of financing costs that may be recovered through securitized utility tariff charges.

EE. Section 393.1700.2(3)(c)l. RSMo, requires the Commission to include in a financing order:

> A procedure that shall allow the electrical corporation to earn a return, at the cost of capital authorized from time to time by the commission in the electrical corporation's rate proceedings, on any moneys advanced by the electrical corporation to fund reserves, if any, or capital accounts

[160] This argument was proposed in Staff's initial brief, but there is no testimony or record evidence supporting Staff's position.
[161] Transcript, Page 441, Lines 21-22.
[162] Transcript, Page 127, Lines 1-17.
[163] Transcript, Page 441-446.

> established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to the securitized utility tariff bonds.

FF. Section 393.1700.2(3)(c)e RSMo, requires the Commission to include in a financing order:

> A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the securitized utility tariff charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of securitized utility tariff bonds and financing costs and other required amounts and charges payable under the securitized utility tariff bonds.

GG. A list of items meeting the definition of "financing costs" is found at Section 393.1700.1(8), RSMo.

HH. Section 393.1700.1(16), RSMo includes "financing costs" as items that may be included in a "securitized utility tariff charge." Subsection 393.1700.1(8)(f) authorizes the Commission to employ financial advisors and legal counsel to assist it in processing a financing application and to include the associated costs as financing costs.

Decision

The Securitization Law requires only an estimate of financing costs. The final financing costs will not be known until the securitization bonds are issued. Evergy West's estimate of $6.6 million for the up-front financing costs only includes $300,000 for the Commission Staff advisors, which is insufficient to cover those costs. Staff includes no discernible amount for Commission Staff advisors, as Staff states those amounts would be borne by Evergy West regardless of whether securitization was granted. Staff estimates $6 million plus the cost for the Commission's advisors as its up-front financing costs without a specific amount for the Commission's advisors. The Commission finds that Staff's methodology for determining the estimated up-front financing costs and the

estimated ongoing financing costs is more appropriate. Therefore, the Commission finds the appropriate estimate of up-front financing cost of approximately $6 million plus the cost of the Commission's advisors reflects an estimate of all of the costs that could be incurred. The Commission will use approximately $508,905 per year in estimated ongoing financing costs. As stated above, these amounts will be finally known at the issuance of the securitization bonds.

The Commission finds that Evergy West's WACC of 8.9 percent to be the only viable option the parties presented that meets the securitization statutory requirements for an appropriate return on investment and treatment of earnings in the capital subaccount.

Due to the potentiality of multiple series resulting in additional costs, the Commission finds that the issuance of multiple series is not appropriate. The Commission will authorize the issuance of one series of securitized utility tariff bonds.

3) Would issuance of securitized utility tariff bonds and imposition of securitized utility tariff charges provide quantifiable net present value benefits to customers as compared to recovery of the securitized utility tariff costs that would be incurred absent the issuance of bonds?

Findings of Fact

123. In its direct testimony, filed along with its application, Evergy calculated a NPV benefit to customers ranging between $64.5 million and $121.3 million from securitizing qualified extraordinary costs.[164]

124. At a securitization term of 15 years and a discount rate range of 8.9 percent and 5.06 percent, the implied NPV benefit of securitization would range from

[164] Klote Direct, Ex. 11, Page 14, Lines 10-20; Schedule RAK-4

approximately $55 million to $67 million when compared to the FAC; and approximately $8 to $19 million when compared to deferral through an AAO.[165]

125. At a securitization term of 15 years and a discount rate of 5.06 percent, the implied NPV benefit of securitization would provide a net present value benefit when compared to customary recovery through Evergy West's FAC.[166]

Conclusions of Law

II. Section 393.1700.2(3)(c)b requires that this Financing Order include:

> A finding that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. …

The Securitization Law does not require this Financing Order to include a quantification of the amount of savings. Rather, it simply requires a finding that there will be expected savings.

Decision

Based on the calculations prepared by Evergy West and Staff, the Commission finds that the proposed issuance of securitized utility tariff bonds are expected to provide quantifiable net present value benefits to customers as compared to the recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds. This conclusion remains true despite the Commission's decisions to use inputs that differ from those proposed by the parties, as demonstrated in the multiple scenarios described by Staff.

[165] Davis Rebuttal, Ex. 106, Pages 6-7, Lines 22-26, 1-4; Ex. 107, Davis confidential work papers, Worksheet MD_1
[166] Ex. 107, Davis confidential work papers, Worksheet MD_1

A) What is the appropriate discount rate to use to calculate net present value of securitized utility tariff costs that would be recovered for Winter Storm Uri through securitization?

Findings of Fact

126. A principle of discounting future cash flows is to use a discount rate consistent with the risk of those cash flows. The certainty of payments under securitization necessitates a lower discount rate than under other ratemaking scenarios.[167]

127. Evergy West proposes using its WACC for reasons addressed in the findings of fact for issue 1, sub-issue M.

128. Evergy West contends that the only appropriate discount rate to use is the same rate that it used to build the cost streams in each of the net present value scenarios (FAC and AAO). Evergy West used its WACC of 8.9 percent because that is the cost of capital that is used in setting its rates.[168]

129. Additional discount rates have been analyzed in other instances, other than just a utility's WACC. Some of those discount rates include the cost of securitization, a utility's cost of debt, and the cost of consumer borrowing. There is no single discount rate that applies uniformly to all customers. [169]

130. Staff's expert financial witness, Mark Davis, evaluated a range of discount rates to evaluate the net present value to customers, including Evergy West's long-term cost of debt rate of 5.06 percent to Evergy West's WACC of 8.9 percent.[170]

Conclusions of Law

There are no additional conclusions of law for this issue.

[167] Murray Rebuttal, Ex. 203, Page 14, Lines 11-13.
[168] Reed Surrebuttal, Ex. 18, Pages 29-30, Lines 23-24, 1-8.
[169] Davis Rebuttal, Ex. 106, Pages 4-5, Lines 20-22, 1-6.
[170] Ex. 107C, confidential workpapers of Mark Davis.

Decision

A discount rate of 5.06 percent is commensurate with the risk involved in securitization, which is quite low. Evergy West's 8.9 percent is not appropriate because these costs are operational. The Commission finds that the 5.06 percent long-term debt rate is an appropriate discount rate.

B) What is the appropriate term and coupon rate for securitization of qualified extraordinary costs related to Winter Storm Uri?

Findings of fact

131. Evergy West proposes that the bonds be issued with a term of 15 years and a legal maturity date of 17 years. The legal maturity date exists to provide rating agencies and investors comfort that there would not be default if there is under collection of the principal amount of the bonds, and provides additional time to pay off the bonds in such an event.[171]

132. If the Commission authorized recovery of Winter Storm Uri costs through an AAO, Staff would recommend an amortization period of at least 15 years due to the magnitude of the costs.[172]

133. Evergy West's direct filing assumed the weighted average coupon rate of securitization estimated to be 3.427 percent. Evergy West revised its coupon rate in surrebuttal based upon recent significant increases in rates. Evergy West's updated weighted average coupon rate is 4.5 percent.[173]

134. The Federal Reserve recently increased interest rates by 75 basis points and has indicated that there could be more increases this year. Evergy West's expert

[171] Transcript, Pages 446-447, Lines 20-25, 1-21,
[172] Bolin Rebuttal, Ex. 100, Pages 6-7, Lines 16-23, 1-2.
[173] Lunde Surrebuttal, Ex. 14, Page 2, Lines 7-20, Based on updated cashflows from July 8, 2022.

witness ran a break-even analysis which demonstrated that even with a 4.5 percent coupon rate there was still another couple of percentage points of rate increase where securitization showed a better net present value to customers. Evergy West's analysis showed that securitization up to very high coupon rates was still the best method of recovery.[174]

135. Evergy West's analysis showed a maximum break-even interest rate for securitization of 9.72 percent compared to an AAO and 6.986 percent compared to Evergy West's FAC based on an 8.9 percent discount rate and 8.9 percent weighted average coupon rate for the AAO and FAC NPV calculations.[175]

136. The break-even interest rate calculated in Evergy West's surrebuttal would be lower if a 5.06 interest rate was use for both the carrying costs and discount rate.[176]

137. Staff's net present value benefit analysis was based on updated estimated coupon rates of 4.5 percent and 5.0 percent.[177]

138. The precise terms and conditions of the proposed securitization, such as interest rates, will not be known until just prior to the sale.[178]

139. Considering the actual demand for the securitization bonds on the day of pricing, the underwriter will agree to purchase the securitization bonds at defined prices and coupon rates.[179]

[174] Transcript, Pages 104-105, Lines 12-25, 1-19.
[175] Transcript, Page 456, Lines 7-13.
[176] Transcript, Page 456, Lines 17-25.
[177] Davis Rebuttal, Ex. 106, Page 6 Line 23.
[178] Lunde Direct, Ex. 13, Page 16, Lines14-15; and Page 23, Line 19 to Page 20, Line 2.
[179] Lunde Direct, Ex. 13, Page 30, Lines 15-20.

Conclusions of Law

JJ. Section 393.1700.2(3)(c)c. RSMo requires the Commission find that the proposed structuring and pricing of the securitization bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitization bonds are priced and the terms of the financing order.

Decision

Evergy West's direct filing assumed a weighted average coupon rate of 3.427 percent, but the Federal Reserve has raised rates twice since that direct filing, affecting bond rates. Staff revaluated the net present value benefits calculation using a coupon rate range of 4.5 percent to 5.0 percent, reflecting movements in the benchmark treasury rate informing bond pricing. The coupon rate will ultimately be updated prior to the submission of the issuance advice letter because it is based on the investors' required return to purchase the securitization bonds. Therefore, the Commission will direct Evergy West to update the net present value benefit calculation, as part of their issuance advice letter, to demonstrate savings of the final bond condition as part of the issuance advice letter.

Evergy West has proposed a 15-year bond term with a final legal maturity date of 17 years. No party has opposed a 15-year term for the bonds. The Commission finds that a 15-year term with a final legal maturity date of 17 years is reasonable, and approves that term for the securitization bonds.

4) How should securitized utility tariff charges be allocated?

Findings of Fact

140. The SUTC is applicable to all existing or future retail customers receiving electrical service from the electrical corporation or its successors or assignees under commission-approved rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021.[180]

141. Evergy West's FAC recovers costs from customers based upon energy consumption adjusted for loss (loss-adjusted energy sales).[181]

142. Evergy West originally proposed allocating the SUTC based upon the customer class revenue allocations adopted by the Commission in File No. ER-2018-0146. [182]

143. Allocating the SUTC by customer class could produce unreasonable results in its own operation, and potentially contribute to rate switching. As a class grows that class's customers will pay a lower SUTC. If a large customer changed rate schedules or ceased service that could result in fluctuations in customer bills within the subject classes.[183]

144. Winter Storm Uri costs consist primarily of fuel and purchased power costs that would typically be recovered through the FAC. Through the FAC, the net costs are recovered from customers on the basis of energy consumption, as adjusted for losses.

[180] Lange Rebuttal, Ex. 104, Page 6, Lines 1-5.
[181] Lange Rebuttal, Ex. 104, Page 20, Lines 1-8.
[182] Lutz Direct, Ex. 15, Page 8 Line 15 to Page 9 Line 2; and Page 9, Figure 1
[183] Lange Rebuttal, Ex. 104, Page 14, Lines 2-6.

Staff's recommended approach would be for the SUTC to be recovered from all applicable customers on the basis of loss-adjustment energy sales.[184]

145. Staff's loss-adjusted energy sales recovery eliminates the SUTC volatility associated with rate-switching, mitigates the SUTC volatility associated with customers leaving the system, mitigates the SUTC volatility associated with customer growth, and will smooth potential variation in the SUTC in place over time.[185]

146. Under Evergy's class allocation methodology, new customers served in the newly-promulgated EV and MKT rate schedules, as well as existing CCN customers, would be billed $0.00/kWh; which is not consistent with the nonbypassability requirements of the Securitization Law.[186]

147. Under Staff's recommended approach, new customers under the newly-promulgated EV and MKT rate schedules would be billed the same rate as other customers served at the same level of distribution services.[187]

148. Evergy West in its surrebuttal agreed with Staff that the SUTC should be allocated to Evergy West's customers based upon loss-adjusted energy sales since it is consistent with the FAC.[188]

Conclusions of Law

KK. Section 393.1700.2(3))(c)h, RSMo requires this financing order to determine "how securitized utility tariff charges will be allocated among retail customer classes."

[184] Lange Rebuttal, Ex. 104, Page 20 Lines 6-13
[185] Lange Rebuttal, Ex. 104, Page 15, lines 6-11.
[186] Lange Rebuttal, Ex. 104, Page 20 Line 20 to Page 21 Line 3.
[187] Lange Rebuttal, Ex. 104, Page 20 Lines 14-19
[188] Lutz Surrebuttal, Ex. 16, Page 3, Lines 1-19

LL. The Commission has much discretion in determining the theory or method it uses in determining rates[189] and can make pragmatic adjustments called for by particular circumstances.[190]

MM. Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying "[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of fact. It has no claim to an exact science."[191]

NN. The definition of "securitized utility tariff charge" found at Section 393.1700.1(16) indicates that such charge is nonbypassable.

Decision

Both MECG and Velvet advocated strongly for allocation by customer class, as contained in Evergy West's direct filing. MECG argues that the appropriate allocation method is the one adopted by the Commission in Evergy West's 2018 rate case, File No. ER-2018-0146. MECG also asserts that allocation method is consistent with the Securitization Law, and more closely aligns Winter Storm Uri costs by cost causation.

Both MECG and Velvet argue that allocation on an energy-based charge places recovery of Winter Storm Uri costs disproportionally on Evergy West's largest customers. However, loss-adjusted allocations not only mirrors how cost recovery occurs under

[189] *State ex rel. Public Counsel v. Public Service Com'n*, 274 S.W.3d 569, 586 (Mo. App. 2009).
[190] *State ex rel. U.S. Water/Lexington v. Missouri Public Service Com'n* 795 S.W.2d 593, 597 (Mo. App. 1990)
[191] *Spire Missouri, Inc. v. Missouri Public Service Com'n* 607 S.W.3d 759, 771 (Mo. App. 2020), *quoting National Ass'n of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 103 S.Ct 2727, 77 L.Ed. 2d 195 (1983). That decision was quoting an earlier United State Supreme Court decision, *Colorado Interstate Gas Co. v. Federal Power Commission,* 324 U.S. 581, 589, 65 S.Ct. 829, 833, 89 L.Ed. 1206 (1945).

Evergy West's FAC, but it also solves many of the problems involving recovery through securitization and conventional allocation by customer class. Allocations by class will change from one general rate case to another, but recovery through securitization is both nonbypassable and occurs over a 15-year time frame. Electrical companies have to file a general rate case to continue their FAC. Evergy West is required to come to the Commission for a rate case every four years if it wishes to continue its FAC.[192] There will most likely be several Evergy West rate cases prior to complete recovery of Winter Storm Uri costs through securitization, and it is highly likely that there will be some changes to Evergy West's class cost allocations over 15 years. Allocation by loss-adjusted energy sales ensures that even if class cost allocations change in a rate case it will not shift ratepayer's responsibility for recovery of Winter Storm Uri costs from one customer to another, or encourage customers to migrate to another rate schedule.

The proposal to allocate costs on the basis of loss-adjusted energy sales is appropriate, and that allocation methodology will be implemented.

5) What, if any, additions or changes should be made to the Storm Securitized Utility Tariff Rider proposed by Evergy West?

Findings of Fact

149. Evergy West submitted an exemplar Securitized Utility Tariff Rider as part of its direct filing. Evergy's exemplar tariff referenced the Financing Order for details on the SUTC and included a table of the monthly billing rate for each rate class.[193]

[192] P.S.C. MO. No. 1, Original Sheet No. 127.13.
[193] Lutz Direct, Ex. 15, Schedule BDL-1, Exemplar Securitized Utility Tariff Rider.

150. Staff witness, Lange, noted that Evergy West's exemplar Securitized Utility Tariff Rider did not reasonably accommodate implementation of any financing order issued in this case.[194]

151. The exemplar tariff did not contain elements and other language that Staff thought should be included in a Securitized Utility Tariff Rider, such as a true-mechanism; nonbypassability of the SUTC for retail customers; how the SUTC should appear on customer's bills; or an approach for allocation of late and partial payments. [195]

152. It is best practice for applicable mechanisms from the financing order to be reflected in the tariff to mitigate the need to reference external sources when executing the tariff.[196]

153. Evergy submitted a revised tariff addressing some of Staff's comments.[197] Most of Staff's issues were resolved in Evergy's revised tariff.[198]

154. Staff witness Lange and Evergy West witness Lutz worked together to design a Securitized Utility Tariff Rider in support of the *Non-Unanimous Stipulation and Agreement* submitted in this case, which was included in a Specimen Exemplar Tariff. The first five pages of that exhibit contain the language that Staff deems necessary[199] for a Securitized Utility Tariff Rider to contain.[200]

Conclusions of Law

There are no additional conclusions of law for this issue.

[194] Lange Rebuttal, Ex. 104, Page 4, Lines 12-16.
[195] Lange Rebuttal, Ex. 104, Pages 4-18 and Transcript V3 Pages 365-371
[196] Lange Rebuttal, Ex. 104, Page 14, Lines 41-43.
[197] Lutz Surrebuttal, Ex. 16, Schedule BDL-3
[198] Transcript V3, Pages 369-371
[199] Staff's initial brief at page 21, and Staff's reply brief at page 11. Evergy West Reply brief at page 33.
[200] Ex. 108, Specimen Exemplar Tariff. Page six of the exemplar tariff contains the Securitized Revenue Requirement and Rate, but does not contain the input amounts approved by the Commission in this order.

Decision

Evergy West's proposed exemplar Securitized Utility Tariff Rider, as submitted, did not contain the necessary elements to implement this financing order, and did not follow best practices so that it could be executed without referencing an external source such as this Financing Order. Exhibit 108, the Specimen Exemplar Tariff submitted by Staff, and developed by Staff witness Lange and Evergy West witness Lutz, addresses Staff's issues concerning the tariff rider language, and has not been objected to by Evergy West or any other party.

The language in Exhibit 108, the Specimen Exemplar Tariff, is appropriate for the implementation of this financing order, independent of the calculations therein, which support the rejected Stipulation. The Commission finds that the changes included in that exhibit make the necessary changes to Evergy West's exemplar tariff. The Commission will approve that tariff language in Exhibit 108 for use in the Securitized Utility Tariff Rider.

6) Regarding any designated staff representatives who may be advised by a financial advisor or advisors, what provision or procedures should the Commission order to implement the requirements of Section 393.1700.2(3)(h) RSMo?

7) What other conditions, if any, are appropriate and not inconsistent with Section 393.1700, RSMo, to be included in the financing order?

The Commission will address these two sub-issues together.

Findings of Fact

155. The Securitization Law authorizes the Commission, to designate in a financing order one or more Staff representatives and advisors to collaborate with the utility in the bond marketing process and to assist the Commission in evaluating the reasonableness of the pricing, terms and conditions of the securitized utility tariff bonds,

and to ensure that securitization transactions provide quantifiable net present value benefits to a utility's customers.[201]

156. Evergy West's proposal for the Commission's review is inadequate. Evergy West intends that the Commission only review the final amount as part of the issuance advice letter.[202] The issuance advice letter is delivered to the Commission sometimes on the day of pricing but no later than the day following pricing.[203] It would be troublesome if the designated Staff representative's participation is limited to advising the Commission whether to approve or disapprove the issuance advice letter.[204]

157. Many details about the securitization bond's costs are not known and will not be known until the bonds are ready to be issued. Commission Staff review of cost amounts prior to those costs being finalized is appropriate and provides a level of involvement that is beneficial to achieving the statutory net benefits objective.[205]

158. The Securitization Law does allow the Commission to reject the securitization by disapproving the issuance advice letter prior to noon on the fourth business day after the commission receives the issuance advice letter.[206] However, if the Commission were to reject the issuance advice letter it would be catastrophic from a capital market perspective.[207] Future attempts to implement a securitization could be negatively impacted.[208] It is preferable that the Commission take whatever steps are

[201] Davis Rebuttal, Ex. 106, Page 8, Lines 7-11.
[202] Davis Rebuttal, Ex. 106, Page 8, Lines 14-16.
[203] Transcript, Page 115, Lines 17-20.
[204] Transcript, Page 486, Lines 15-19.
[205] Davis Rebuttal, Ex. 106, Page 8, Lines 11-13.
[206] Section 393.1700.2(3)(h) RSMo.
[207] Transcript, Page 487, Lines 6-8.
[208] Transcript, Page 114, Lines 20-24.

necessary to limit the possibility that the issuance advice letter needs to be rejected.[209] Ultimately what's very important in the review process is making sure that the structure, marketing, and pricing are set up in a way where there's no need to reject the issuance advice letter at the end of the process.[210]

159. A best practice is to establish a designated representative review process in advance of the issuance advice letter.[211] Feedback from the Commission and Commission Staff throughout the marketing, structuring, and pricing process, with a review process established within the financing order best ensures the statutory net present value objective is achieved and minimizes the risk of the issuance advice letter ultimately being rejected.[212] Thus, there is a need for interim review and the ability for Commission Staff to regularly update the Commission and transmit feedback as necessary.[213]

160. Other parties may not have an incentive to protect the interest of ratepayers, who are solely responsible for the cost of the financing.[214] Therefore, the financing order should provide for the designated representative and its advisor, to be involved, provide input, and collaborate with Evergy West in all facets of the bond structuring, marketing, and pricing processes for the bonds, as well as the hiring of underwriters and other deal participants.[215]

[209] Transcript, Page 116, Lines 6-10.
[210] Transcript, Page 434, Lines 6-10.
[211] Transcript, Page 487, Lines 16-17.
[212] Davis Rebuttal, Ex. 106, Page 12, Lines 4-7.
[213] Davis Rebuttal, Ex. 106, Page 8, Lines 19-20.
[214] Davis Rebuttal, Ex. 106, Page 11, Lines 3-5.
[215] Davis Rebuttal, Ex. 106, Page 10, Lines 10-12.

161. Evergy West should have the flexibility to establish repayment schedules, coupons, financing costs, and other bond terms and conditions, so long as Commission Staff is provided the necessary ability to provide input and collaborate, and notify the Commission of any objections as necessary.[216]

162. In its proposed draft financing order, Staff included a section addressing the rights and responsibilities of a designated representative. Staff would advise the Commission to designate representatives from Commission staff, who will be advised by financial and other advisors, including outside counsel, to provide input to Evergy West and collaborate with it in all facets of the process to place the securitized utility tariff bonds to market, so the designated representative can provide the Commission with an opinion on the reasonableness of the bonds on an expedited basis. The designated Staff representatives would be given authority to "review all facets of the structuring, marketing and pricing bond processes." Further, the designated representative would be allowed to "attend all meetings and participate in all calls, e-mails, and other communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds."[217]

Conclusions of Law

OO. Section 393.1700.2(3)(h) RSMo, provides that before securitization bonds are issued, the electrical corporation is required to provide an "issuance advice letter" to the Commission describing the final terms of the bonds. The Commission is allowed only until noon on the fourth business day after it receives the issuance advice letter to issue a disapproval letter directing that the bond issuance as proposed should not proceed.

[216] Davis Rebuttal, Ex. 106, Page 12, Lines 19-23.
[217] Staff's draft Financing Order, Pages 20-22.

PP. So that the Commission will have sufficient insight into the bond placing process to be able to evaluate the issuance advice letter in the short amount of time allowed, Section 393.1700.2(3)(h), RSMo, gives the Commission authority to:

> designate a representative or representatives from commission staff, who may be advised by a financial advisor or advisors contracted with the commission, to provide input to the electrical corporation and collaborate with the electrical corporation in all facets of the process undertaken by the electrical corporation to place the securitized utility tariff bonds to market so the commission's representative or representatives can provide the commission with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis.

QQ. Section 393.1700.2(3)(h) also expressly limits the authority of the Commission's representative or representatives, stating:

> Neither the designated representative or representatives from the commission's staff nor one or more financial advisors advising commission staff shall have authority to direct how the electrical corporation places the bonds to market although they shall be permitted to attend all meetings convened by the electrical corporation to address placement of the bonds to market.

RR. Importantly, Section 393.1700.2(3)(h) also allows the Commission to include provisions in the financing order "relating to the issuance advice letter process as the commission considers appropriate and as are not inconsistent with this section."

SS. Section 393.1700.2(3)(a)b contemplates that the Commission may issue a financing order approving the petition "subject to conditions."

TT. Section 393.1700.2(3)(c)c requires a financing order to include:

> A finding that the proposed structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order.

Decision

This Securitization Law is a relatively new statute and this is only the third securitization petition to come before the Commission. The previous two cases were for one regulated utility and resulted in one financing order. So, this will be the Commission's second financing order. The Commission necessarily has some concerns. Unlike other cases before the Commission, a financing order authorizes Evergy West to take the necessary steps to issue securitization bonds where the final interest coupon rate and total securitization amounts are unknown as of the issuance of this order.

The Commission's only recourse if the issuance advice letter is unsatisfactory is to reject it by issuing a disapproval letter by noon of the fourth day following receipt of the issuance advice letter, directing that the bonds not be issued. Both Staff and Evergy West's financial experts explained that option would be catastrophic from a capital market perspective. The Commission will not have any ability to modify or nullify the financing order or the securitization bonds once issued, and that is as it should be from a market perspective. In order to ensure the interest of the ratepayers are represented during the structuring, marketing and pricing phase, the Commission believes that Staff's proposal to include one or more designated representatives from Staff, financial advisors, and outside counsel, (collectively "Finance Team") is appropriate and within the bounds set by the Securitization Law. The Finance Team should be allowed to be involved in the process with the understanding that the Finance Team does not have authority to approve that process. Pursuant to the Securitization Law the Finance Team may review, provide input, collaborate, and report to the Commission. It is ultimately up to the Commission to approve the issuance of the securitization bonds.

To that end, the Commission will authorize the Finance Team to participate with Evergy West in the process of placing the securitization bonds to market. To ensure that the structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff bond charges consistent with market conditions and the terms of this Financing Order, the Commission authorizes the Finance Team to review, provide input and oversight, and collaborate on the structuring, marketing and pricing of the securitized utility tariff bonds and related transaction documents. The costs of such Finance Team should constitute financing costs.

The Finance Team's participation is not to interfere with the process of placing the bonds to market but to act as the Commission's proxy in providing oversight and input on the transaction to confirm that the transaction provides quantifiable net present value benefits to customers compared to the use of traditional ratemaking and results in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced.

The Finance Team shall have the right to review, provide input, and collaborate on all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the size, selection process, participants, allocations and economics of the underwriter and any other member of the syndicate group; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Evergy West and the underwriters; (6) all associated costs, (including up front and ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond maturities; (8) reporting templates; (9) the amount of any equity contributions;

(10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The preceding and other items may be reviewed by the Finance Team during the entire pre-issuance process. The pre-issuance review process will help ensure that the securitized utility tariff bonds will be issued with material terms that meet the requirements of the Securitization Law. The Finance Team's review shall continue until the issuance advice letter is disapproved, approved, or takes effect by operation of law.

The Commission may require status meetings or phone conferences with the Finance Team and involved parties to communicate and update the Commission on the information being reviewed and prepared in the structuring and pricing process. The Commission may request access to the actual documents and information being reviewed by the Finance Team as needed. The Finance Team may submit written status reports to the Commission as it deems appropriate or as requested by the Commission. If concerns arise during the process, such status meetings, conferences or updates can be requested by the Finance Team or other involved parties as needed.

The Finance Team does not have the authority to direct how Evergy West places the securitized utility tariff bonds to market, but it shall be permitted to attend all meetings convened by Evergy West, and participate in all non-privileged calls, e-mails, and other communications relating to the structuring, pricing and issuance of the securitized utility tariff bonds, or be subsequently informed of the substance of those communications.

Supplementary to the submission of the issuance advice letter, Evergy West and the lead underwriters for the securitized utility tariff bonds shall provide a written certificate to the Commission certifying, and setting forth all calculations and assumptions used to support such calculations and certificate, that the issuance of the securitized utility tariff

bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. Such certificates shall be a condition precedent to the submission of the issuance advice letter to the Commission.

The securitized tariff bonds issued in compliance with this order shall have a triple-A rating from at least two of the nationally recognized rating agencies.

8) Should the Commission grant a waiver under Section 10(A)(1) of the Affiliate Transactions Rule between Evergy West and the SPE?

Findings of Fact

163. Evergy West does not believe that the SPE is an affiliate.[218]

164. Evergy West contends that the SPE's activities will be restricted to acquiring the securitized property, issuing the securitization bonds, collecting the SUTC, and paying principal and interest on the bonds to the bondholders. The SPE will be overseen by an independent manager.[219]

165. The asymmetrical pricing requirement of Commission Rule 20 CSR 4240-20.015 requires a regulated utility to obtain the lower of fair market price or fully

[218] Ives Direct, Ex. 8, Page 18, Lines 4-5.
[219] Ives Direct, Ex. 8, Page 18, Lines 6-11.

distributed costs for services provided to them by affiliates while also receiving the greater of market price or fully distributed costs for services it provides to affiliates.[220]

166. There is good cause to grant a waiver of the asymmetrical pricing provisions of the Commission's affiliate transactions rule because the SPE will mainly perform corporate support functions such as the collection of the fees, any servicing fees, and some administrative duties.[221]

167. Staff does not oppose a waiver, but asserts that the sections of the affiliate transactions rule that apply to record keeping should not be waived because Staff will need to review the securitization-related affiliate transactions in a future rate case to ensure that the assignment of costs to the SPE is appropriate.[222]

Conclusions of Law

UU. Commission Rule 20 CSR 4240-20.015(1)(A) defines an affiliated entity as being directly or indirectly controlled by, or under common control with, a regulated electrical corporation.

VV. Commission Rule 20 CSR 4240-20.015(2)(A) provides:

> A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if—
>
> 1. It compensates an affiliated entity for goods or services above the lesser of—
>
> A. The fair market price; or
> B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself; or

[220] Bolin Surrebuttal, Ex. 101, Page 2, Lines 1-21.
[221] Transcript, Page 343, Lines 10-15.
[222] Bolin Surrebuttal, Ex. 101, Page 3, Lines 4-9.

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

A. The fair market price; or

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

Decision

The Commission disagrees with Evergy West's assertion that the SPE is not an affiliate of the utility. The Commission also concurs with Staff's oversight concerns. Even if the SPE performs only corporate support functions, without adherence to the record keeping requirements of the affiliate transactions rule the Commission would have no way to review the securitization-related affiliate transactions to ensure that the assignment of costs is appropriate. The Commission finds that the SPE is an affiliate of Evergy West. The Commission will grant a waiver of the asymmetrical pricing provisions of the Commission's affiliate transactions rule, but not of the portions of the affiliate transactions rule relating to record retention.

Non-contested Issues

The Commission makes the following findings of fact.

A) Identification and Procedure

Identification of Petitioner and Background

168. Evergy Missouri West, Inc. d/b/a Evergy Missouri West is a Delaware corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. Evergy West is engaged in the generation, transmission, distribution, and sale of electricity in Missouri. Evergy West is an "electrical corporation" and a "public utility" subject to the jurisdiction, supervision, and control of the Commission as provided by law. Evergy West is a wholly owned subsidiary of Evergy, Inc. A certificate

of authority for Evergy West, as a foreign corporation, to do business in Missouri, was filed with the Commission in Case No. EN-2020-0064.

B) Financing Costs and Amount of Securitized Utility Tariff Costs to be Financed

Identification

169. The actual amount of up-front financing costs of the securitized utility tariff bonds will not be known until the securitized utility tariff bonds are sold and such amounts are approved in the issuance advice letter. The actual amount of certain ongoing financing costs relating to the securitized utility tariff bonds may not be known until such costs are incurred; provided that the securitization structure will limit the amount of ongoing financing costs to amounts appropriate for the size of the transaction.

170. Evergy West will use the proceeds from the sale of the securitized utility tariff property to recover costs incurred as a result of the anomalous weather event Winter Storm Uri, consisting of qualified extraordinary costs and financing costs, in accordance with the Securitization Law and this Financing Order.

171. The proposed structuring and pricing of the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order.

172. The securitized utility tariff bonds will be secured by securitized utility tariff property that shall be created in favor of Evergy West or its successors or assignees and that shall be used to pay or secure the securitized utility tariff bonds and approved financing costs. The securitized utility tariff property principally consists of the right to receive revenues from the securitized utility tariff charges.

173. It is appropriate that Evergy West be authorized to establish the terms and conditions of the securitized utility tariff bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs, except as expressly limited in this Financing Order. The Finance Team will review the complete terms and conditions of the securitized utility tariff bonds, the calculations of the initial securitized utility tariff charges, the expected and actual up-front and ongoing financing costs and the net present value calculations set forth in the issuance advice letter.

174. After the final terms of the securitized utility tariff bonds have been established and before the issuance of such bonds, it is appropriate for Evergy West to determine the resulting initial securitized utility tariff charge in accordance with this Financing Order, and that such initial charge be final and effective upon the issuance of such securitized utility tariff bonds with such charge to be reflected on a compliance tariff sheet bearing such charge that will be submitted to the Commission at the same time as the issuance advice letter.

175. Evergy West proposed a method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property.

176. Evergy West shall earn a return, at the WACC of 8.9 percent authorized from time to time by the Commission in Evergy West’s rate proceedings, on any moneys advanced by Evergy West to fund the capital subaccount established under the terms of the indenture or other financing documents pertaining to the securitized utility tariff bonds. This return shall be included as an ongoing financing cost to be paid through the collection of securitized utility tariff charges.

177. It is appropriate that Evergy West shall be authorized to issue securitized utility tariff bonds pursuant to this Financing Order for an "effective period" commencing with the date of this Financing Order and extending 24 months following the date on which this Financing Order becomes final and no longer subject to any appeal. If, at any time during the effective period of this Financing Order, there is a severe disruption in the financial markets of the United States, it is appropriate for the effective period to be extended in consultation with the Finance Team to a date which is not less than 90 days after the date such disruption ends.

Issuance Advice Letter

178. As the actual structure and pricing of the securitized utility tariff bonds will be unknown at the time this Financing Order is issued, prior to the issuance of the securitized utility tariff bonds, Evergy West will provide an issuance advice letter to the Commission following the determination of the final terms of the securitized utility tariff bonds no later than one day after the pricing of the securitized utility tariff bonds. The issuance advice letter will include total up-front financing costs for the issuance. The form of such issuance advice letter, which shall indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs, is set out in Appendix A to this Financing Order. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as required under this Financing Order. The issuance advice letter will demonstrate the quantifiable net present value savings from the issuance of the securitized utility tariff bonds as compared to the customary method of financing. Evergy West may proceed with the issuance of the securitized utility tariff bonds unless,

prior to noon on the fourth business day after the Commission receives the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

179. If the actual up-front financing costs are less than the up-front financing costs included in the principal amount securitized, the amount of such unused funds (together with interest, if any, earned on the investment of such funds) will be returned to customers in a general rate proceeding. If the actual up-front financing costs are more than the up-front financing costs included in the principal amount securitized, Evergy West will have the right to be reimbursed for such prudently incurred excess amounts through the establishment of a regulatory asset.

180. Evergy West will submit a draft issuance advice letter to the Finance Team for review not later than two weeks before the expected date of commencement of marketing the securitized utility tariff bonds. The Finance Team will review the issuance advice letter and provide timely feedback to Evergy West based on the progression of structuring, marketing and pricing of the securitized utility tariff bonds.

181. The issuance advice letter for the securitized utility tariff bonds must be submitted to the Commission not later than one day after the pricing of the securitized utility tariff bonds. The Finance Team may request such revisions to the issuance advice letter as may be necessary to ensure the accuracy of the calculations and information included and that the requirements of the Securitization Law and of this Financing Order have been met. The initial securitized utility tariff charges and the final terms of the securitized utility tariff bonds set forth in the issuance advice letter must become effective on the date of issuance of the securitized utility tariff bonds (which must not occur before

the fifth business day after pricing of the securitized utility tariff bonds) unless before noon on the fourth business day after the Commission receives the issuance advice letter the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

C) Structure of the Proposed Securitization

Special Purpose Entity

182. For purposes of issuing the securitized utility tariff bonds, Evergy West will create a bankruptcy-remote SPE, which will be a Delaware limited liability company with Evergy West as its sole member. The SPE will be formed for the limited purpose of acquiring securitized utility tariff property, issuing securitized utility tariff bonds in one or more tranches, and performing other activities relating thereto or otherwise authorized by this Financing Order. The SPE will not be permitted to engage in any other activities and will have no assets other than securitized utility tariff property and related assets to support its obligations under the securitized utility tariff bonds. Obligations relating to the securitized utility tariff bonds will be the SPE's only material liabilities. These restrictions on the activities of SPE and restrictions on the ability of Evergy West to take action on the SPE's behalf are imposed to achieve the objective that the SPE will be bankruptcy-remote and not affected by a bankruptcy of Evergy West or any other person. The SPE will be managed by a board of directors or a board of managers with rights and duties similar to those of a board of directors of a corporation. As long as the securitized utility tariff bonds remain outstanding, the SPE will be overseen by at least one independent director or manager whose approval will be required for any bankruptcy-related actions and certain other major actions or organizational changes. The SPE will not be permitted to amend

the provisions of the organizational documents that relate to bankruptcy-remoteness of the SPE without the consent of the independent directors or managers. Similarly, the SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent director or manager. Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of the SPE as required by the rating agencies.

183. The initial capital of the SPE will be not less than 0.50 percent of the original principal amount of the securitized utility tariff bonds issued by the SPE. Adequate funding of the SPE at this level is intended to protect the bankruptcy-remoteness of the SPE.

Statutory Requirements

184. The SPE will issue securitized utility tariff bonds in one series consisting of one or more tranches. The aggregate principle amount of all tranches of the securitized utility tariff bonds issued under this Financing Order must not exceed the principal amount approved by this Financing Order. The SPE will pledge to the indenture trustee, as collateral for payment of the securitized utility tariff bonds, the securitized utility tariff property, including the SPE's right to receive the securitized utility tariff charges as and when collected, and certain other collateral described herein.

185. Concurrent with the issuance of any of the securitized utility tariff bonds, Evergy West will sell to the SPE the securitized utility tariff property, consisting of all of the following: (a) Evergy West's rights and interests under this Financing Order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized under this Financing Order and to obtain periodic adjustments to such charges

as provided in this Financing Order and (b) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds. This transfer will be structured so that it will qualify as a "true sale" within the meaning of Section 393.1700.5.(3) and that such rights will become securitized utility tariff property concurrently with their sale to the SPE as provided in Section 393.1700.2.(3)(d). By virtue of the transfer, the SPE will acquire all of the right, title, and interest of Evergy West in the securitized utility tariff property arising under this Financing Order.

Credit Enhancement and Arrangements to Enhance Marketability

186. Evergy West is permitted to recover the ongoing costs of any credit enhancements and arrangements to enhance marketability, if such credit enhancements are required by the rating agencies to achieve the highest possible credit rating on the securitized utility tariff bonds and subject to consultation with the Finance Team. If the use of more than de minimis original issue discount, credit enhancements, or other arrangements is proposed by Evergy West, Evergy West must provide the Finance Team with copies of all cost-benefit analyses performed by or for Evergy West that support the request to use such arrangements. This finding does not apply to the collection account or its subaccounts to be established under the indenture set forth in this Financing Order.

Securitized Utility Tariff Property

187. Securitized utility tariff property and all other collateral will be held and administered by the indenture trustee under the indenture.

Servicer and the Servicing Agreement

188. Evergy West, as the initial servicer of the securitization property, will enter into a servicing agreement with the SPE, as owner of the securitization property. The servicing agreement may be amended, renewed or replaced by another servicing agreement subject to certain conditions set forth therein. The entity responsible for carrying out the servicing obligations under any servicing agreement is the servicer. Evergy West will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the servicing agreement and as authorized by the Commission. Under the servicing agreement, the servicer is required to, among other things, impose and collect the securitized utility tariff charges for the benefit and account of the SPE, make the periodic true-up adjustments of securitized utility tariff charges required or permitted by this Financing Order, and account for and remit the securitized utility tariff charges to or for the account of the SPE in accordance with the remittance procedures contained in the servicing agreement and the indenture without any charge, deduction or surcharge of any kind. Under the terms of the servicing agreement, if any servicer fails to perform its servicing obligations in any material respect, the indenture trustee acting under the indenture to be entered into in connection with the issuance of the securitized utility tariff bonds, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of securitized utility tariff bonds, must, appoint an alternate party to replace the defaulting servicer, in which case the replacement servicer

will perform the obligations of the servicer under the servicing agreement. The obligations of the servicer under the servicing agreement and the circumstances under which an alternate servicer may be appointed will be more fully described in the servicing agreement. The rights of the SPE under the servicing agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the securitized utility tariff bonds.

189. The obligations to continue to provide service and to collect and account for securitized utility tariff charges will be binding upon Evergy West and any other entity that provides electrical services to a person that is a retail customer located within Evergy West's service area as it exists on the date of this Financing Order, or that became a retail customer for electric services within such service area after the date of this Financing Order, and is still located within such area.

190. To the extent that Evergy West assigns, sells or transfers any interest in its transmission or distribution system (or any portion thereof) to an assignee,[223] Evergy West will enter into a contract with that assignee that will require the entity acquiring such facilities to continue operating the facilities to provide electric services to Evergy West's customers, subject to approval of the Commission and in accordance with the other conditions set forth in the servicing agreement and this Financing Order.

Securitized Utility Tariff Bonds

191. The SPE will issue and sell securitized utility tariff bonds in one series consisting of one or more tranches. The legal final maturity date of the securitized utility

[223] The term assignee means any corporation, Limited Liability Company, general partnership or limited partnership, public authority, trust, financing entity, or other legally recognized entity to which an interest in securitized utility tariff property is transferred, other than as security, including any assignee of that party. See § 393.1700.1.(2).

tariff bonds will not exceed 17 years from the date of issuance. The legal final maturity date and principal amounts of each tranche will be finally determined by Evergy West in consultation with the Finance Team, consistent with market conditions and indications of the rating agencies, at the time the securitized utility tariff bonds are priced, but subject to ultimate Commission review through the issuance advice letter process. Subject to the conditions and criteria set forth in this Financing Order, Evergy West will retain sole discretion regarding whether or when to assign, sell, or otherwise transfer any rights concerning securitized utility tariff property arising under this Financing Order, or to cause the issuance of any securitized utility tariff bonds authorized in this Financing Order, subject to the right of the Commission to issue a disapproval letter.

Security for Securitized Utility Tariff Bonds

192. The payment of the securitized utility tariff bonds and related charges authorized by this Financing Order is to be secured by the securitized utility tariff property created by this Financing Order and certain other collateral as described herein. The securitized utility tariff bonds will be issued under an indenture administered by the indenture trustee. The indenture will include provisions for a collection account for the series and subaccounts for the collection and administration of the securitized utility tariff charges and payment or funding of the principal and interest on the securitized utility tariff bonds and ongoing financing costs in connection with the securitized utility tariff bonds approved in this Financing Order. In accordance with the indenture, a collection account will be established as a trust account to be held by the indenture trustee as collateral to ensure the payment of the principal, interest, and ongoing financing costs approved in this Financing Order related to the securitized utility tariff bonds in full and on a timely

basis. The collection account will include the general subaccount, the capital subaccount, and the excess funds subaccount, and may include other subaccounts.

The General Subaccount

193. The indenture trustee will deposit the securitized utility tariff charge remittances that the servicer remits to the indenture trustee for the account of the SPE into one or more segregated trust accounts and allocate the amount of those remittances to the general subaccount. The indenture trustee will on a periodic basis apply moneys in this subaccount to pay principal of and interest on the securitized utility tariff bonds, to pay ongoing financing costs and to replenish any draws on the capital subaccount. The funds in the general subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and all other components of the total securitized revenue requirement (as defined in finding of fact number 203), and otherwise in accordance with the terms of the indenture.

The Capital Subaccount

194. Evergy West will make a capital contribution to the SPE, which the SPE will deposit into the capital subaccount. The amount of the capital contribution will be not less than 0.50 percent of the original principal amount of the securitized utility tariff bonds, although the actual amount will depend on tax and rating agency requirements. The capital subaccount will serve as collateral to ensure timely payment of principal of and interest on the securitized utility tariff bonds and all other components of the total securitized revenue requirement. Any funds drawn from the capital account to pay these

amounts due to a shortfall in the securitized utility tariff charge remittances will be replenished through future securitized utility tariff charge remittances. The funds in the capital subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including investment earnings) will be used by the indenture trustee to pay principal of and interest on the securitized utility tariff bonds and all other components of the total securitized revenue requirement. Evergy West will be authorized to receive a return on the capital contribution at the WACC of 8.9 percent as ongoing financing costs recoverable through the securitized utility tariff charge. Upon payment of the principal amount of all securitized utility tariff bonds and the discharge of all obligations that may be paid by use of securitized utility tariff charges, all amounts remaining in the capital subaccount at that time, will be released to the SPE for payment to Evergy West. Evergy West will account for any investment earnings on funds in the capital subaccount in a reconciliation in a general rate case and such amounts will be credited to ratepayers.

The Excess Funds Subaccount

195. The excess funds subaccount will hold any securitized utility tariff charge remittances and investment earnings on the collection account in excess of the amounts needed to pay current principal of and interest on the securitized utility tariff bonds and to pay other total securitized revenue requirements (including, but not limited to, replenishing the capital subaccount). Any balance in or allocated to the excess funds subaccount on a true-up adjustment date will be subtracted from the total securitized revenue requirement (as defined in finding of fact number 203) for purposes of the true-up adjustment. The money in the excess funds subaccount will be invested by the indenture trustee in short-term high-quality investments, and such money (including

investment earnings thereon) will be used by the indenture trustee to pay principal and interest on the securitized utility tariff bonds and other total securitized revenue requirements.

Other Subaccounts

196. Other credit enhancements in the form of subaccounts may be utilized for the transaction provided that the use of such subaccounts is consistent with the Statutory Requirements and subject to consultation with the Finance Team. For example, Evergy West does not propose use of an overcollateralization subaccount. Under Rev. Proc. 2002-49, as modified, amplified and superseded by Rev. Proc. 2005-62 issued by the IRS, the use of an overcollateralization subaccount is not necessary for favorable tax treatment nor does it appear to be necessary to obtain AAA ratings for the proposed securitized utility tariff bonds. If Evergy West subsequently determines in consultation with the Finance Team that use of an overcollateralization subaccount or other subaccount is necessary to obtain AAA ratings from the credit agencies or will otherwise increase the quantifiable net present value benefits of the securitization, Evergy West may implement such subaccounts to reduce securitized utility tariff bond charges.

General Provisions

197. The collection account and the subaccounts described above are intended to provide for full and timely payment of scheduled principal of and interest on the securitized utility tariff bonds and all other components of the total securitized revenue requirement. If the amount of securitized utility tariff charges remitted to the general subaccount is insufficient to make all scheduled payments of principal and interest on the securitized utility tariff bonds and to make payment on all of the other components of the

total securitized revenue requirement, the excess funds subaccount and the capital subaccount will be drawn down, in that order, to make those payments. Any deficiency in the capital subaccount due to such withdrawals must be replenished to the capital subaccount on a periodic basis through the true-up process. In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Such accounts will be administered and utilized as set forth in the servicing agreement and the indenture. Upon the maturity of the securitized utility tariff bonds and the discharge of all obligations in respect thereof, remaining amounts in the collection account, other than amounts that were in the capital subaccount, will be released to the SPE and equivalent amounts will be credited by Evergy West to customers. In addition, upon the maturity of the securitized utility tariff bonds, any subsequently collected securitized utility tariff charges shall be credited to retail customers.

Securitized Utility Tariff Charges—Imposition and Collection, Nonbypassability, and Alternative Electric Suppliers

198. In the event the State of Missouri permits third-party billing, the securitized utility tariff charges must continue to be collected by a third-party biller and remitted to the SPE.

199. Securitized utility tariff charges will be identified on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill. Each customer bill shall include a statement to the effect that the SPE is the owner of the rights to securitized utility tariff charges and that Evergy West is acting as servicer for the SPE. The tariff applicable to customers shall indicate the securitized utility tariff charge and the ownership of the charge.

200. If any customer does not pay the full amount it has been billed, the amount collected will be prorated among charge categories in proportion to their percentage of the overall bill, with the first dollars collected attributed to past due balances, if any.

201. Evergy West will collect securitized utility tariff charges from all existing or future retail customers receiving electrical service from Evergy West or its successors or assignees under Commission-approved rate schedules, except for customers receiving electrical service under special contracts[224] as of August 28, 2021, even if a retail customer elects to purchase electricity from an alternative electricity supplier following a change in regulation of public utilities in Missouri. Any such existing or future retail customer within such area may not avoid securitized utility tariff charges by switching to another electrical corporation, electric cooperative, or municipally owned utility on or after the date this Financing Order is issued.

202. The imposition and collection of securitized utility tariff charges set forth in this Financing Order is reasonable and is necessary to ensure collection of securitized utility tariff charges sufficient to support recovery of the securitized utility tariff costs and financing costs approved in this Financing Order. The form of Securitized Utility Tariff Rider included in this Financing Order is reasonable and these tariff provisions will be filed before any securitized utility tariff bonds are issued under this Financing Order.

Allocation of Financing Costs Among Missouri Retail Customers

203. The total securitized revenue requirement is the required securitized revenues for a given period (e.g., annually, semi-annually, or quarterly) due under the securitized utility tariff bonds. Each total securitized revenue requirement includes: (a) the

[224] *See* Section 393.1700.1.(19) RSMo.

principal amortization of the securitized utility tariff bonds in accordance with the expected amortization schedule (including deficiencies of previously scheduled principal for any reason); (b) periodic interest on the securitized utility tariff bonds (including any accrued and unpaid interest); (c) ongoing financing costs consisting of the servicing fee, rating agencies' fees, trustee fees, legal and accounting fees, other ongoing fees and expenses approved herein, and the costs, if any, of maintaining any credit enhancement; (d) bad debts net of prior recovery period collections; and (e) for each of (a) through (d), any variations calculated through a reconciliation of the current period total securitized revenue requirement actuals to the projections, forecasts, or estimates to the extent that actuals are available. The initial total securitized revenue requirement for the securitized utility tariff bonds issued under this Financing Order will be updated in the issuance advice letter, subject to review and consultation with the Finance Team.

204. The securitized utility tariff costs and financing costs that will be recovered through the securitized utility tariff charges authorized by this Financing Order are allocated to all applicable customers on the basis of loss-adjusted energy sales. The securitized utility tariff costs applicable to customers served at each voltage level is accomplished by first dividing the sum of the amounts described above by the forecasted recovery period retail sales to all applicable customers (adjusted to generation voltage) by the voltage level expansion factor applicable to each service voltage.

True-Up of Securitized Utility Tariff Charges

205. The servicer of the securitized utility tariff bonds will use a formula-based true-up mechanism to make periodic, expeditious adjustments, at least annually, to the securitized utility tariff charges to:

(a) correct any undercollections or overcollections that may have occurred and otherwise ensure that the SPE receives remittances from securitized utility tariff charges that are required to satisfy the total securitized revenue requirement, including without limitation any overcollections or undercollections caused by defaults, during the time since the last true-up; and

(b) ensure the billing of securitized utility tariff charges necessary to generate the collection of amounts sufficient to timely provide all payments of scheduled principal and interest (or deposits to sinking funds in respect of principal and interest) and any other amounts due in connection with the securitized utility tariff bonds (including ongoing financing costs and amounts required to be deposited in or allocated to any collection account or subaccount) during the period for which such adjusted securitized utility tariff charges are to be in effect.

The servicer will make true-up adjustment filings with the Commission annually, and if the servicer forecasts undercollections semi-annually.

206. True-up filings will be incorporated into the next recovery period based upon the cumulative differences, regardless of the reason, between the total securitized revenue requirement (including scheduled principal of and interest payments on the securitized utility tariff bonds) designed to be recovered during the current recovery period and the amount of securitized utility tariff charge remittances to the indenture trustee received during the current recovery period from application of the current rate then in effect. To ensure adequate securitized utility tariff charge revenues to fund the total

securitized revenue requirement and to avoid overcollections and undercollections over time, some required data contemplated to be actual may be projected or forecasted as of the time of filing the tariff (including projections of uncollectible securitized utility tariff charges; projections of payment lags between the billing and collection of the securitized utility tariff charges; and forecast retail sales for the recovery period). To the extent projected or forecasted data is used in calculating the securitized utility tariff charges, such projections and forecasts will be reconciled in future calculations of the securitized utility tariff charges through a true-up adjustment.

207. At the time of each true-up adjustment, the servicer will provide a new total securitized revenue requirement amount for the coming recovery period which shall incorporate any variations calculated through a reconciliation of the current recovery period new total securitized revenue requirement actuals to the projections, forecasts, or estimates to the extent that actuals are available. The servicer will provide its best available forecasted sales for the coming recovery period, and all supporting information. The true-up amount will be included in the calculation of the total securitized revenue requirement applicable to the next recovery period.

Interim True-Up

208. In addition to annual true-up adjustments, the servicer (a) will make interim true-up adjustments semi-annually (or quarterly beginning 12 months prior to the final scheduled payment date of the last tranche of the securitized utility tariff bonds) or (b) may make interim true-up adjustments at any time:

(a) if the servicer forecasts that securitized utility tariff charge collections will be insufficient to make all scheduled payments of principal, interest, and

other amounts in respect of the securitized utility tariff bonds on a timely basis during the current or next succeeding payment period; or

(b) to replenish any draws upon the capital subaccount.

Additional True-Up Provisions

209. Each true-up adjustment filing will be filed not less than 30 days before the billing cycle of the month in which the revised securitized utility tariff charge will be in effect. Each true-up adjustment filing will set forth the servicer's calculation of the true-up adjustment to the securitized utility tariff charges. Within 30 days after receiving a true-up adjustment filing, the Commission will either approve the request or inform Evergy West of any mathematical or clerical errors in its calculation. If the Commission informs Evergy West of mathematical or clerical errors in its calculation, Evergy West will correct its error and refile its request. The time frames previously described in this paragraph will apply to a refiled request.

Lowest Securitized Utility Tariff Charges

210. The proposed transaction structure includes (but is not limited to):

(a) the use of the SPE as issuer of the securitized utility tariff bonds, limiting the risks to securitized utility tariff bond holders of any adverse impact resulting from a bankruptcy proceeding of Evergy West or any other person;

(b) the right to impose and collect securitized utility tariff charges that are nonbypassable and which must be trued-up at least annually, but may be trued-up more frequently to assure the timely payment of the debt service and other ongoing financing costs;

(c) additional collateral in the form of a collection account that includes a capital subaccount funded in cash in an amount equal to not less than 0.50 percent of the original principal amount of the securitized utility tariff bonds and other subaccounts resulting in greater certainty of payment of interest and principal to investors and that are consistent with the IRS requirements that must be met to receive the desired federal income tax treatment for the securitized utility tariff bond transaction;

(d) protection of securitized utility tariff bondholders against potential defaults by a servicer that is responsible for billing and collecting the securitized utility tariff charges from existing or future retail customers;

(e) benefits for federal income tax purposes including (i) the transfer of the rights under this Financing Order to the SPE not resulting in gross income to Evergy West and the future revenues under the securitized utility tariff charges being included in Evergy West's gross income under its usual method of accounting, (ii) the issuance of the securitized utility tariff bonds and the transfer of the proceeds of the securitized utility tariff bonds to Evergy West not resulting in gross income to Evergy West, and (iii) the securitized utility tariff bonds constituting obligations of Evergy West; and

(f) the securitized utility tariff bonds will be marketed using underwriting and marketing processes reviewed in consultation with the Finance Team, through which market conditions and investors' preferences, with regard to the timing of the issuance, the terms and conditions, related maturities,

and other aspects of the structuring, marketing and pricing, will be determined, evaluated and factored into the structuring, marketing and pricing of the securitized utility tariff bonds.

211. To ensure that customers receive the quantifiable net present value benefits due from the proposed securitization and so that the proposed securitized utility tariff bond transaction will be in accordance with the quantifiable net present value benefits test set forth in Section 393.1700.2.(3)(c), it is necessary that (i) the issuance advice letter demonstrates that the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are just and reasonable and in the public interest; and will provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, (ii) the scheduled final payment of the last tranche of securitized utility tariff bonds will not exceed 15 years (although the legal final maturity of the securitized utility tariff bonds may extend to 17 years) and (iii) Evergy West otherwise satisfies the requirements of this Financing Order.

D) Use of Proceeds

212. Upon the issuance of securitized utility tariff bonds, the SPE will use the net proceeds from the sale of the securitized utility tariff bonds (after payment of up-front financing costs) to pay Evergy West the purchase price of the securitized utility tariff property. Evergy West will use the proceeds from the sale of the securitized utility tariff property to recover the qualified extraordinary costs incurred by Evergy West in connection with the anomalous weather event Winter Storm Uri approved herein.

213. SPP has issued resettlements in the months of June, August, and December 2021 after the winter weather event. Evergy West will continue to track and adjust the amount that is ultimately requested to be financed in this proceeding as a result any other resettlements or adjustments that may occur, and will report these to the Commission on a monthly basis, provided, however, nothing may impact the amount of securitized utility tariff bonds or the securitized utility tariff charges.

V. Conclusions of Law

The Commission makes the following conclusions of law.

WW. Evergy West is an electrical corporation, as defined in Section 393.1700.1(6).

XX. Evergy Missouri West is entitled to file a petition for a financing order under Section 393.1700.

YY. The Commission has jurisdiction and authority over Evergy West's petition under Section 393.1700.2.

ZZ. The Commission has authority to approve this Financing Order under Section 393.1700.2.

AAA. Notice of Evergy West's petition was provided in compliance with Section 393.1700.2.(3)(a)b.

BBB. The Securitization Law permits an electrical corporation request a Commission order authorizing it to finance securitized utility tariff costs, including its qualified extraordinary costs.

CCC. Qualified extraordinary costs are defined in Section 393.1700.1.(13) to include costs incurred prudently before, on, or after August 28, 2021, of an extraordinary

nature which would cause extreme customer rate impacts if reflected in retail customer rates recovered through customary ratemaking, such as but not limited to those related to purchases of fuel or power, inclusive of carrying charges, during anomalous weather events. Securitized utility tariff costs are defined Section 393.1700.1.(17) to include either energy transition costs or qualified extraordinary costs, as the case may be. Financing costs are defined in Section 393.1700.1.(8) to include: (i) interest and acquisition, defeasance, or redemption premiums payable on securitized utility tariff bonds; (ii) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to securitized utility tariff bonds; (iii) any other cost related to issuing supporting, repaying, refunding, and servicing securitized utility tariff bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of securitized utility tariff bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order; (iv) any taxes and license fees or other fees imposed on the revenues generated from the collection of securitized utility tariff charges or otherwise resulting from the collection of securitized utility tariff charges, in any such case whether paid, payable, or accrued; (v) any state and local taxes, franchise, gross receipts, and other taxes or similar charges, including Commission assessment fees,

whether paid, payable, or accrued; and (vi) any costs associated with performance of the Commission's responsibilities under the Securitization Law in connection with approving, approving subject to conditions, or rejecting a petition for a financing order, and in performing its duties in connection with the issuance advice letter process, including costs to retain counsel, one or more financial advisors, or other consultants as deemed appropriate by the Commission and paid pursuant to the Securitization Law.

DDD. The SPE constitutes an assignee of Evergy West as defined in Section 393.1700.1.(2) when an interest in the securitized utility tariff property created under this Financing Order is transferred to SPE.

EEE. The holders of the securitized utility tariff bonds and the indenture trustee will each be a financing party as defined in Section 393.1700.1.(10).

FFF. The SPE may issue securitized utility tariff bonds in accordance with this Financing Order.

GGG. The issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges approved in this Financing Order satisfies the requirements of Sections 393.1700.2.(3)(c)a., b. and c. mandating that (1) the amount of securitized utility tariff costs to be financed using securitized utility tariff bonds and the recovery of such costs is just and reasonable and in the public interest; (2) the proposed issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges are just and reasonable and in the public interest and are expected to provide quantifiable net present value benefits to customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds; and (3) the proposed structuring and pricing of

the securitized utility tariff bonds are reasonably expected to result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of the financing order.

HHH. Evergy West is permitted to earn a return, at the cost of capital authorized hereunder, but no more, on any moneys advanced by Evergy West to fund reserves, if any, or capital accounts established under the terms of the indenture, any ancillary agreement, or other financing documents pertaining to the securitized utility tariff bonds. Evergy West shall account for any investment earnings on funds in such capital accounts in a future reconciliation pursuant to Section 393.1700.2.(3)(c)l.

III. This Financing Order adequately describes the amount of financing costs that Evergy West may recover through securitized utility tariff charges and specifies the period over which Evergy West may recover securitized utility tariff charges and financing costs in accordance with the requirements of Section 393.1700.2.(3)(c)a.

JJJ. The method approved in this Financing Order for allocating the securitized utility tariff charges satisfies the requirements of Section 393.1700.2.(3)(c)h.

KKK. As provided in Section 393.1700.2(3)(f), at the time the securitized utility tariff property is transferred from Evergy West to the SPE, this Financing Order is irrevocable and, except for changes made pursuant to the formula-based true-up mechanism authorized herein, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized utility tariff charges approved in this Financing Order.

LLL. As provided in Section 393.1700.2.(3)(d), the securitized utility tariff property identified herein will become securitized utility tariff property under the Securitization Law when it is sold to the SPE.

MMM. (a) All rights and interests of Evergy West under this Financing Order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized in this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order and (b) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in this Financing Order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds that are sold to the SPE under the securitized utility tariff property sale agreement, will be securitized utility tariff property within the meaning of Section 393.1700.1.(18), are assignable and will become securitized utility tariff property when they are first transferred to SPE.

NNN. Upon its sale to the SPE, the securitized utility tariff property specified in this Financing Order will constitute an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of securitized utility tariff charges depends on Evergy West performing its servicing functions relating to the collection of securitized utility tariff charges and on future electricity consumption, as provided by Section 393.1700.5.(1)(a). The securitized utility tariff property will exist (a) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected; and (b) notwithstanding the fact that

the value or amount of the property is dependent on the future provision of service to customers by the electrical corporation or its successors or assignees and the future consumption of electricity by customers.

OOO. The securitized utility tariff property specified in this Financing Order will continue to exist until the securitized utility tariff bonds issued pursuant to this Financing Order are paid in full and all financing costs and other costs of such securitized utility tariff bonds have been recovered in full as provided in Section 393.1700.5.(1)(b).

PPP. Upon the transfer by Evergy West of securitized utility tariff property to the SPE, the SPE will have all of the rights, title, and interest of Evergy West with respect to such securitized utility tariff property, including the right to impose, bill, charge, collect, and receive the securitized utility tariff charges authorized by this Financing Order.

QQQ. The securitized utility tariff bonds issued under this Financing Order will be securitized utility tariff bonds within the meaning of Section 393.1700.1.(15), and the securitized utility tariff bonds and holders thereof will be entitled to all of the protections provided under Section 393.1700.11.

RRR. Amounts that are authorized by this Financing Order or the tariffs approved hereby are securitized utility tariff charges as defined in Section 393.1700.1.(16), and the amounts collected from retail customers with respect to such securitized utility tariff charges are securitized utility tariff charges as defined in Section 393.1700.1.(16).

SSS. As provided in Section 393.1700.5.(1)(e), the interests of SPE and the indenture trustee in the securitized utility tariff property and in the revenues and collections arising from the securitized utility tariff property will not be subject to setoff, counterclaim, surcharge, or defense by Evergy West or any other person or in connection

with the reorganization, bankruptcy, or other insolvency of Evergy West or any other entity.

TTT. The methodology approved in this Financing Order to true-up the securitized utility tariff charges satisfies the requirements of Section 393.1700.2.(3)(c)e.

UUU. Upon the sale from Evergy West to the SPE of the securitized utility tariff property, the servicer will be able to recover the securitized utility tariff charges associated with such securitized utility tariff property only for the benefit of the SPE in accordance with the servicing agreement.

VVV. As provided in Section 393.1700.3.(5), Evergy West retains sole discretion regarding whether to cause the securitized utility tariff bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Evergy West may abandon the issuance of securitized utility tariff bonds under this Financing Order by filing with the Commission a statement of abandonment and the reasons therefor.

WWW. The sale of the securitized utility tariff property from Evergy West to the SPE will be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, Evergy West's right, title, and interest in, to, and under the securitized utility tariff property if the sale agreement governing such sale expressly states that the sale is a sale or other absolute transfer in accordance with Sections 393.1700.5.(3)(a) and (b). Upon the sale in accordance with the previous sentence, the characterization of the sale as an absolute transfer and true sale and the corresponding characterization of the property interest of the SPE will not be affected or impaired by the occurrence of (a) the commingling of securitized utility tariff charges with other amounts; (b) the retention by Evergy West of (i) a partial or residual interest, including an equity

interest, in the securitized utility tariff property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of securitized utility tariff charges; (c) any recourse that the SPE may have against Evergy West; (d) any indemnification rights, obligations, or repurchase rights made or provided by Evergy West; (e) the obligation of Evergy West to collect securitized utility tariff charges on behalf of the SPE; (f) Evergy West acting as the servicer of the securitized utility tariff charges or the existence of any contract that authorizes or requires the electrical corporation, to the extent that any interest in securitized utility tariff property is sold or assigned, to contract with the SPE or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the securitized utility tariff charges for the benefit and account of the SPE or such financing party, and will account for and remit such amounts to or for the account of such assignee or financing party; (g) the treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes; (h) the granting or providing to bondholders a preferred right to the securitized utility tariff property or credit enhancement by Evergy West or its affiliates with respect to such securitized utility tariff bonds; or (i) any application of the formula-based true-up mechanism, in accordance with Section 393.1700.5.(3)(b).

XXX. As provided in Section 393.1700.5.(2)(b), a valid and binding security interest in the securitized utility tariff property in favor of the indenture trustee will be created at the later of the time this Financing Order is issued, the indenture is executed and delivered by the SPE granting such security interest, the SPE has rights in the securitized utility tariff property or the power to transfer rights in the securitized utility tariff

property, or value is received for the securitized utility tariff property. Upon the filing of a financing statement with the office of the secretary of state as provided in the Securitization Law, a security interest in securitized utility tariff property shall be perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, and regardless of whether the parties have notice of the security interest in accordance with Section 393.1700.5.(2)(c). Without limiting the foregoing, upon such filing a security interest in securitized utility tariff property shall be perfected against all claims of lien creditors, and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with the Securitization Law.

YYY. As provided in Section 393.1700.5.(3)(c), the transfer of an interest in securitized utility tariff property to SPE will be perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with Section 393.1700.7.

ZZZ. As priority of the sale perfected under Section 393.1700.5. will not be impaired by any later modification of this Financing Order or securitized utility tariff property or by the commingling of funds arising from securitized utility tariff property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under Section 393.1700.5., is terminated when they are transferred to a segregated account for the SPE or a financing party. Any proceeds of the securitized utility tariff property shall be held in trust for the SPE.

AAAA. As provided in Section 393.1700.5.(2)(f), if a default occurs under the securitized utility tariff bonds that are securitized by the securitized utility tariff property,

the indenture trustee may exercise the rights and remedies available to a secured party under the Missouri Uniform Commercial Code, including the rights and remedies available under part 6 of article 9 of the Missouri Uniform Commercial Code, and (a) the Commission may order that amounts arising from the related securitized utility tariff charges be transferred to a separate account for the indenture trustee's benefit, to which their lien and security interest may apply and (b) on application by the indenture trustee, the district court of Jackson County, Missouri, will order the sequestration and payment to the indenture trustee of revenues arising from the securitized utility tariff charges.

BBBB.As provided in Section 393.1700.5(2)(f), if a default occurs under the securitized utility tariff bonds, on application by or on behalf of the financing parties, a district court of Jackson County, Missouri, must order the sequestration and payment to those parties of revenues arising from the securitized utility tariff charges. As provided by Section 393.1700.9., (a) neither the State of Missouri nor its political subdivisions are liable on the securitized utility tariff bonds approved under this Financing Order, and the securitized utility tariff bonds are not a debt or a general obligation of the State of Missouri or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State of Missouri or any agency or political subdivision and (b) the issuance of securitized utility tariff bonds approved under this Financing Order does not, directly, indirectly, or contingently, obligate the State of Missouri or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the securitized utility tariff bonds, other than in their capacity as consumers of electricity.

CCCC. Under Section 393.1700.11.(1), the State of Missouri and its agencies, including the Commission, have pledged for the benefit and protection of bondholders, the owners of the securitized utility tariff property, other financing parties and Evergy West, that the State and its agencies will not (a) alter the provisions of the Securitization Law, (b) take or permit any action that impairs or would impair the value of securitized utility tariff property or the security for the securitized utility tariff bonds or revises the securitized utility tariff costs for which recovery is authorized, (c) in any way impair the rights and remedies of the bondholders, assignees, and other financing parties or (d) except for changes made pursuant to the true-up mechanism authorized under this Financing Order, reduce, alter, or impair securitized utility tariff charges until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the securitized utility tariff bonds have been paid and performed in full. The SPE is authorized under Section 393.1700.11.(2) and this Financing Order to include this pledge in the securitized utility tariff bonds and related documents. The pledge does not preclude limitation or alteration if full compensation is made by law for the full protection of the securitized utility tariff charges collected pursuant to this Financing Order and of the bondholders and any assignee or financing party entering into a contract with Evergy West.

DDDD. This Financing Order will remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings, merger or sale of Evergy West, its successors, or assignees.

EEEE. Pursuant to Section 393.1700.2.(3)(a)c., this Financing Order is subject to judicial review only in accordance with Sections 386.500 and 386.510.

FFFF. This Financing Order meets the requirements for a financing order under Section 393.1700.

Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

Approval

1. **Approval of Petition**. The petition of Evergy West for the issuance of a financing order under Sections 393.1700 are approved, subject to the conditions and criteria provided in this Financing Order.

2. **Authority to Securitize**. Evergy West is authorized in accordance with this Financing Order to finance and to cause the issuance of securitized utility tariff bonds with a principal amount equal to the sum of (a) the securitizable balance at the time the securitized utility tariff bonds are issued *plus* (b) up-front financing costs, which includes (i) underwriters discounts and commissions, (ii) legal costs, (iii) the cost of original issue discount, credit enhancements and other arrangements to enhance marketability as in accordance with ordering paragraph 23, (iv) rating agency fees, (v) United States Securities and Exchange Commission registration fees, and (vi) any costs of the Commission associated with its responsibilities under the Securitization Law in connection with this Financing Order, and in performing its duties in connection with the structuring, marketing and pricing of the securitized utility tariff bonds and the issuance advice letter process (including any costs of the Commission's designated representatives, financial advisors and other advisors (including outside bond counsel)). The securitizable balance as of any given date is equal to the balance of qualified

extraordinary costs plus carrying costs accruing at a 5.06 percent long-term debt rate through the date the securitized utility tariff bonds are issued. If the actual up-front financing costs are less than the up-front financing costs included in the aggregate principal amount of the securitized utility tariff bonds, the amount of such unused funds (together with interest, if any, earned from the investment of such funds) will be returned to customers in a general rate proceeding. If the actual up-front financing costs are more than the up-front financing costs included in the aggregate principal amount of the securitized utility tariff bonds, Evergy West will have the right to be reimbursed for such prudently incurred excess amounts through the establishment of a regulatory asset.

3. **Recovery of Securitized Utility Tariff Costs**. Evergy West is authorized to recover $307,811,246 of its qualified extraordinary costs related to Winter Storm Uri. The up-front financing costs are estimated to be $6.0 million plus the cost of the Commission's advisors, which will be updated through the issuance advice process.

4. **Tracing Funds**. Evergy West's proposed method of tracing funds collected as securitized utility tariff charges, or other proceeds of securitized utility tariff property shall be used to trace such funds and to determine the identifiable cash proceeds of any securitized tariff property subject to this Financing Order under applicable law.

5. **Third Party Billing**. If the State of Missouri or this Commission decides to allow billing, collection, and remittance of the securitized utility tariff charges by a third-party supplier within Evergy West's service territory, such authentication will be consistent with the rating agencies' requirements necessary for the securitized utility tariff bonds to receive and maintain the targeted triple-A rating.

6. **Provision of Information**. Evergy West must take all necessary steps to ensure that the Commission and its designated representatives and their financial and other advisors are provided sufficient and timely information as provided in this Financing Order in order to fulfill their obligations under the Securitization Law and this Financing Order.

7. **Issuance Advice Letter**. Evergy West shall submit a draft issuance advice letter to the Finance Team for review not later than two weeks before the expected date of commencement of marketing the securitized utility tariff bonds; provided that such draft issuance advice letter will be revised as necessary and re-submitted to the Finance Team if the expected date of commencement of marketing is delayed. With the agreement of the Finance Team, the actual date of the commencement of marketing may be a date other than the expected date. The Finance Team will review the draft issuance advice letter and provide timely feedback to Evergy West based on the progression of structuring and marketing of the securitized utility tariff bonds. Not later than one day after the pricing of the securitized utility tariff bonds and before issuance of the securitized utility tariff bonds, Evergy West shall provide the Commission an issuance advice letter in substantially the form of the issuance advice letter attached as Appendix A to this Financing Order. Evergy West and the lead underwriters for the securitized utility tariff bonds shall provide a written certificate to the Commission certifying that the issuance of the securitized utility tariff bonds (i) complies with this Financing Order, (ii) complies with all other applicable legal requirements (including all requirements of Section 393.1700), (iii) that the issuance of the securitized utility tariff bonds and the imposition of the securitized utility tariff charges will provide quantifiable net present value benefits to

customers as compared to recovery of the components of securitized utility tariff costs that would have been incurred absent the issuance of securitized utility tariff bonds, and (iv) that the structuring, marketing and pricing of the securitized utility tariff bonds will result in the lowest securitized utility tariff charges consistent with market conditions at the time the securitized utility tariff bonds are priced and the terms of this Financing Order. The issuance advice letter must be completed, must evidence the actual dollar amount of the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued. The issuance advice letter will demonstrate the ultimate amounts of quantifiable net present value benefits. In addition, if more than de minimis original issue discount, credit enhancements, or arrangements to enhance marketability are used, the issuance advice letter must include certification that such original issue discount, credit enhancements, or other arrangements are reasonably expected to provide benefits as required by this Financing Order. All amounts which require computation shall be computed using the mathematical formulas contained in the form of the issuance advice letter in Appendix A to this Financing Order and the Securitized Utility Tariff Rider. Electronic spreadsheets with the formulas supporting the schedules contained in the issuance advice letter must be included with such letter. The Finance Team may request such revisions to the issuance advice letter as may be necessary to assure the accuracy of the calculations and information included and that the requirements of the Securitization Law and this Financing Order. The initial securitized utility tariff charges and the final terms of the securitized utility tariff bonds set forth in the issuance advice letter will become effective on the date of issuance of the securitized utility tariff bonds (which must not occur before the fifth business day after pricing) unless

before noon on the fourth business day after the Commission receives the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

8. **Approval of Tariff**. The form of Securitized Utility Tariff Rider attached as Appendix B to this order is approved. Before the issuance of any securitized utility tariff bonds under this Financing Order, Evergy West must file compliance tariff sheets that conform to the form of the Securitized Utility Tariff Rider tariff provisions attached to this Financing Order, but with rate elements left blank. With its submission of the issuance advice letter, Evergy West shall also submit a compliance tariff sheet, bearing an effective date no earlier than five business days after its submission, containing the rate elements of the securitized utility tariff charge. That compliance tariff sheet shall become effective on the date the securitized utility tariff bonds are issued with no further action of the Commission unless the Commission issues a disapproval letter as described in Ordering Paragraph 7.

Securitized Utility Tariff Charges

9. **Imposition and Collection**. Evergy West is authorized to impose on and the servicer is authorized to collect from all existing and future retail customers[225] located within Evergy West's service area as such service area exists on the date this Financing Order is issued and other entities which, under the terms of this Financing Order or the tariffs approved hereby, are required to bill, pay, or collect securitized utility tariff charges, securitized utility tariff charges in an amount sufficient to provide for the timely recovery of the aggregate total securitized revenue requirements (including payment of principal

[225] Excluding special contract customers as of August 28, 2021.

of and interest on the securitized utility tariff bonds), as approved in this Financing Order. If there is a partial payment of an amount billed, the amount paid must first be apportioned ratably between the securitized utility tariff charges and other fees (excluding any late fees), and second, any remaining portion of the payment must be allocated to late fees.

10. **SPE's Rights and Remedies**. Upon the sale by Evergy West of the securitized utility tariff property to the SPE, the SPE will have all of the rights and interest of Evergy West with respect to such securitized utility tariff property, including, without limitation, the right to exercise any and all rights and remedies with respect thereto, including the right to authorize disconnection of electric service and to assess and collect any amounts payable by any retail customer in respect of the securitized utility tariff property.

11. **Collector of Securitized Utility Tariff Charges**. Evergy West or any subsequent servicer of the securitized utility tariff bonds shall bill a customer or other entity, which, under the terms of this Financing Order or the tariffs approved hereby, is required to bill or collect securitized utility tariff charges for the securitized utility tariff charges attributable to that customer.

12. **Collection Period**. The scheduled final payment date of securitized utility tariff bonds may not exceed 15 years and the legal final maturity of such tranche of the securitized utility tariff bonds may extend to 17 years.

13. **Allocation**. Evergy West shall allocate the securitized utility tariff charges in the manner described in this Financing Order.

14. **Nonbypassability**. Evergy West shall collect and remit the securitized utility tariff charges in accordance with this Financing Order.

15. **True-Ups**. Evergy West shall file true-up adjustments of the securitized utility tariff charges as described in this Financing Order.

16. **Ownership Notification**. The servicer shall ensure that each retail customer bill that includes the securitized utility tariff charge meets the notification of ownership and separate line item requirements set forth in this Financing Order.

Securitized Utility Tariff Bonds

17. **Issuance**. Evergy West is authorized to cause the SPE to issue one series of securitized utility tariff bonds as specified in this Financing Order. The securitized utility tariff bonds must be denominated in United States Dollars.

18. **Up-front Financing Costs**. Evergy West may finance up-front financing costs in accordance with the terms of this Financing Order, which provides that the total amount for up-front financing cost, which includes (i) underwriters' discounts and commissions, (ii) legal fees, (iii) auditor fees, (iv) structuring advisor fees, (v) the cost of original issue discount, credit enhancements and other arrangements to enhance marketability as discussed in ordering paragraphs 7 and 23, (vi) information technology programming costs, (vii) rating agency fees, (viii) United States Securities and Exchange Commission registration fees, and (ix) any costs of the Commission associated with its responsibilities under the Securitization Law in connection with this Financing Order, and in performing its duties in connection with the structuring, marketing and pricing of the securitized utility tariff bonds and the issuance advice letter process (including any costs of the Commission's designated representatives, financial advisors and other advisors (including outside counsel)).

19. **Ongoing Financing Costs**. Evergy West may recover its actual ongoing financing costs through its securitized utility tariff charges set forth in Appendix C to this Financing Order. The amount of ongoing financing costs is subject to updating in the issuance advice letter in consultation with the Finance Team to reflect a change in the size of the securitized utility tariff bond issuance and other information available at the time of filing the issuance advice letter. As provided in ordering paragraph 30, a servicer, other than Evergy West or its affiliates, may collect a servicing fee higher than that set forth in Appendix C to this Financing Order, if such higher fee is approved by the Commission and the indenture trustee and subject to rating agency conditions.

20. **Collateral**. All securitized utility tariff property and other collateral must be held and administered by the indenture trustee under the indenture as described in Evergy West's petition. The SPE must establish a collection account with the indenture trustee as described in finding of fact number [189]. Upon payment of the principal amount of all securitized utility tariff bonds authorized in this Financing Order and the discharge of all obligations in respect thereof, all amounts in the collection account, including investment earnings, must be released by the indenture trustee to the SPE for distribution in accordance with ordering paragraph 21.

21. **Distribution Following Repayment**. Following repayment of the securitized utility tariff bonds authorized in this Financing Order and release of the funds held by the indenture trustee, the servicer, on behalf of the SPE, must credit to retail customers, the final balance of the subaccounts (other than principal remaining in the capital subaccount), whether such balance is attributable to principal amounts deposited in such subaccounts or to interest thereon, remaining after all other financing costs have

been paid. The SPE shall also credit to retail customers any subsequently collected securitized utility tariff charges.

22. **Funding of Capital Subaccount**. The capital contribution by Evergy West to be deposited into the capital subaccount shall be funded by Evergy West and not from the proceeds of the sale of securitized utility tariff bonds at an amount not less than 0.50 percent of the original principal amount of the securitized utility tariff bonds and required by tax and rating agency requirements at the time of issuance determined in consultation with the Finance Team. Evergy West is authorized to receive a return on the capital contribution at a WACC of 8.9 percent. Upon payment of the principal amount of all securitized utility tariff bonds and the discharge of all obligations in respect thereof, all amounts in the capital subaccount, will be released to the SPE for payment to Evergy West, with any investment earnings on funds in the capital account to be accounted for in a future reconciliation process under Section 393.1700.2.(3)(c)k.

23. **Original Issue Discount, Credit Enhancement**. Evergy West may provide original issue discount or provide for various forms of credit enhancement, including letters of credit, an overcollateralization subaccount or other accounts, surety bonds, and other mechanisms designed to promote the credit quality or marketability of the securitized utility tariff bonds to the extent permitted by and subject to the terms of this Financing Order only if Evergy West certifies that such arrangements are reasonably expected to provide benefits greater than their cost and such certifications are agreed with by the Finance Team. Except for a de minimis amount of original issue discount, any decision to use such arrangements to enhance credit or promote marketability must be made in consultation with the Finance Team. Evergy West may not enter into an interest

rate swap, currency hedge, or interest rate hedging arrangement. This ordering paragraph does not apply to the collection account or its subaccounts approved in this Financing Order.

24. **Recovery Period**. The Commission authorizes Evergy West to recover the securitized utility tariff costs and financing costs over a period not to exceed 17 years from the date the securitized utility tariff bonds are issued, although this does not prohibit recovery of securitized utility tariff charges for service rendered during the 17-year period but not actually collected until after the 17-year period.

25. **Amortization Schedule**. The securitized utility tariff bonds shall be structured to provide a securitized utility tariff charge that is based on substantially levelized annual revenue requirements over the expected life of the securitized utility tariff bonds and allocated on the basis of loss-adjusted energy sales, subject to modification in accordance with this Financing Order.

26. **Finance Team Participation in Bond Issuance**. The Commission, acting through its Finance Team, may participate with Evergy West in discussions regarding the structuring, marketing and pricing of the securitized utility tariff bonds. The Finance Team has the right to provide input to Evergy West and collaborate with Evergy West in all facets of the structuring, marketing and pricing bond processes, including but not limited to, (1) the underwriter and any other member of the syndicate group size, selection process, participants, allocations and economics; (2) the structure of the bonds; (3) the bonds credit rating agency application; (4) the underwriters' preparation, marketing and syndication of the bonds; (5) the pricing of the bonds and the certifications provided by Evergy West and the underwriters; (6) all associated costs, (including up front and

ongoing financing costs), servicing and administrative fees and associated crediting; (7) bond maturities; (8) reporting templates; (9) the amount of any capital contributions; (10) credit enhancements; and (11) the initial calculations of the securitized utility tariff charges. The foregoing and other items may be reviewed during the entire course of the Finance Team's process. The Finance Team's review will begin immediately following this Financing Order becoming non-appealable and will continue until the issuance advice letter becomes effective. The Finance Team will not have authority to direct how Evergy West places the securitized utility tariff bonds to market although they shall be permitted to attend all meetings, participate in all calls, emails, and other communications relating to the structuring, marketing, pricing and issuance of the securitized utility tariff bonds. The Commission retains authority over enforcing the terms of this Financing Order, and the Finance Team' process may petition the Commission for relief for any actual or threatened violation of the terms of the Financing Order.

27. **Use of the SPE**. Evergy West must use the SPE, a bankruptcy-remote special purpose entity, to issue the securitized utility tariff bonds authorized under this Financing Order. The SPE must be funded with an amount of capital that is sufficient for the SPE to carry out its intended functions and to avoid the possibility that Evergy West would have to extend funds to the SPE in a manner that could jeopardize the bankruptcy remoteness of SPE.

Servicing

28. **Servicing Agreement**. The Commission authorizes Evergy West to enter into the servicing agreement with the SPE and to perform the servicing duties approved in this Financing Order. Without limiting the foregoing, in its capacity as initial servicer of

the securitized utility tariff property, Evergy West is authorized to calculate, impose, bill, charge, collect and receive for the account of the SPE, the securitized utility tariff charges authorized in this Financing Order, as adjusted from time to time to meet the total securitized revenue requirements as provided in this Financing Order; and to make such filings and take such other actions as are required or permitted by this Financing Order in connection with the periodic true-up adjustments described in this Financing Order. The servicer is entitled to collect servicing fees in accordance with the provisions of the servicing agreement; *provided* that the annual servicing fee payable to Evergy West while it is serving as servicer (or to any other servicer affiliated with Evergy West) must not at any time exceed 0.05 percent of the original principal amount of the securitized utility tariff bonds. The annual servicing fee payable to any servicer not affiliated with Evergy West must not at any time exceed 0.60 percent of the original principal amount of the securitized utility tariff bonds unless such higher rate is approved by the Commission and the indenture trustee and subject to rating agency conditions under ordering paragraph 30.

29. **Administration Agreement**. The Commission authorizes Evergy West to enter into an administration agreement with the SPE to provide the services covered by the administration agreements. The fee charged by Evergy West as administrator under that agreement must not exceed $50,000 per annum plus reimbursable third-party costs.

30. **Replacement of Evergy West as Servicer**. Upon the occurrence of a servicer termination event under the servicing agreement, the financing parties may replace Evergy West as the servicer in accordance with the terms of the servicing agreement. The servicing fee of the replacement servicer shall not exceed the applicable

maximum servicing fee unless approved as specified in ordering paragraph 28, the replacement servicer must not begin providing service until the date the Commission approves the appointment of such replacement servicer. No entity may replace Evergy West as the servicer in any of its servicing functions with respect to the securitized utility tariff charges and the securitized utility tariff property authorized by this Financing Order, if the replacement would cause any of the then current credit ratings of the securitized utility tariff bonds to be suspended, withdrawn, or downgraded.

31. **Amendment of Agreements**. The parties to the servicing agreement, administration agreement, indenture, and securitized utility tariff property purchase and sale agreement may amend the terms of such agreements; *provided* that no amendment to any such agreement increases the ongoing financing costs without the approval of the Commission. Any amendment to any such agreement that may have the effect of increasing ongoing financing costs must be provided by the SPE to the Commission along with a statement as to the possible effect of the amendment on the ongoing financing costs.

32. **Collection Terms**. The servicer shall remit collections of the securitized utility tariff charges to the SPE or the indenture trustee for the SPE's account in accordance with the terms of the servicing agreement.

33. **Federal Securities Law Requirements**. Each other entity responsible for collecting securitized utility tariff charges from retail customers must furnish to the SPE or Evergy West or to any successor servicer information and documents necessary to enable the SPE or Evergy West or any successor servicer to comply with their respective

disclosure and reporting requirements, if any, with respect to the securitized utility tariff bonds under federal securities laws.

Structure of the Securitization

34. **Structure**. Evergy West shall structure the issuance of the securitized utility tariff bonds and the imposition and collection of the securitized utility tariff charges as set forth in this Financing Order.

Use of Proceeds

35. **Use of Proceeds**. Upon the issuance of securitized utility tariff bonds, the SPE shall pay the net proceeds from the sale of the securitized utility tariff bonds (after payment of up-front financing costs) to pay Evergy West the purchase price of the securitized utility tariff property. Evergy West shall use the proceeds from the sale of the securitized utility tariff property to recover the qualified extraordinary costs incurred by Evergy West in connection with the anomalous weather event Winter Storm Uri approved herein.

Miscellaneous Provisions

36. **Continuing Issuance Right**. In accordance with Section 393.1700.2(3)(c)n., Evergy West has the continuing irrevocable right to cause the issuance of securitized utility tariff bonds in one series in accordance with this Financing Order for a period commencing with the date of this Financing Order and extending 24 months following the date on which this Financing Order becomes final and no longer subject to any appeal. If, at any time during the effective period of this Financing Order, there is a severe disruption in the financial markets of the United States, the effective period may be extended with the approval of the Commission's designated

representatives to a date which is not less than 90 days after the date such disruption ends.

37. **Binding on Successors**. This Financing Order, together with the securitized utility tariff charges authorized in it, shall be binding on Evergy West and any successor to Evergy West that provides transmission and distribution service directly to retail customers in Evergy West's service area as it exists on the date of this Financing Order, any other entity that provides transmission or distribution services to retail customers within that service area, and any successor to such other entity. In this paragraph, a successor means any entity that succeeds to any interest or obligation of its predecessor, including by way of bankruptcy, reorganization or other insolvency proceeding, merger, consolidation, conversion, assignment, pledge or other security, by operation of law or otherwise.

38. **Flexibility**. Subject to compliance with the requirements of this Financing Order, Evergy West and the SPE are afforded flexibility in establishing the terms and conditions of the securitized utility tariff bonds, including the final structure of the SPE, repayment schedules, term, payment dates, collateral, credit enhancement, required debt service, interest rates, use of original issue discount, and other financing costs.

39. **Effectiveness of Order**. This Financing Order will become effective on November 27, 2022. However, no securitized utility tariff property is created hereunder, and Evergy West is not authorized to impose, collect, and receive securitized utility tariff charges until the securitized utility tariff property has been sold to the SPE in conjunction with the issuance of the securitized utility tariff bonds.

40. **Regulatory Approvals**. All regulatory approvals within the jurisdiction of the Commission that are necessary for the recovery of the approved securitized utility tariff charges associated with the securitized utility tariff costs that are the subject of the petition and for all related transactions contemplated in the petition are granted

41. **Payment of Commission's Costs for Professional Services**. Evergy West shall pay all costs of the Commission in connection with the petition, this Financing Order and the proposed transaction, including, but not limited to, the Commission's outside attorneys' fees and the fees of any financial or other advisors from the proceeds of the securitized utility tariff bonds on the date of issuance as up-front financing costs.

42. **Effect**. This Financing Order constitutes a legal financing order for Evergy West under the Securitization Law. The Commission finds this Financing Order complies with the Securitization Law. A financing order gives rise to rights, interests, obligations, and duties as expressed in the Securitization Law. It is the Commission's express intent to give rise to those rights, interests, obligations, and duties by issuing this Financing Order. Evergy West and the SPE are directed to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to compliance with the conditions and criteria established in this Financing Order.

43. **Rejection of the Stipulation.** The *Non-Unanimous Stipulation and Agreement* submitted by Evergy West, Staff, and Public Counsel on August 1, 2022, is rejected and the Commission does not adopt it as the resolution of any issue contained therein.

44. **All Other Motions Denied**. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

45. This report and order shall become effective on November 27, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Clark, Senior Regulatory Law Judge

FORM OF ISSUANCE ADVICE LETTER

_____Day of_____2023
Case No._____

MISSOURI PUBLIC SERVICE COMMISSION

SUBJECT: ISSUANCE ADVICE LETTER FOR SECURITIZED UTILITY TARIFF BONDS

Pursuant to the Financing Order adopted in *Petition of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for a Financing Order*, Case No. _(the "Financing Order"), EVERGY MISSOURI WEST, INC. D/B/A EVERGY MISSOURI WEST ("Petitioner") hereby submits, no later than one day after the pricing date of the Securitized Utility Tariff Bonds, the information referenced below. This Issuance Advice Letter is for the 202[3] Securitized Utility Tariff Bonds, tranches A-1 through A-[__]. Any capitalized terms not defined in this letter have the meanings ascribed to them in the Financing Order.

PURPOSE

This filing establishes the following:

(a) the total amount of Securitized Utility Tariff Costs and Financing Costs being financed;
(b) the amounts of quantifiable net present value savings;
(c) confirmation of compliance with issuance standards;
(d) the actual terms and structure of the Securitized Utility Tariff Bonds being issued;
(e) the initial Securitized Utility Tariff Charge for retail customers; and
(f) the identification of the Special Purpose Entity (SPE).

SECURITIZED UTILITY TARIFF COSTS AND FINANCING COSTS BEING FINANCED

The total amount of Securitized Utility Tariff Costs and Financing Costs being financed (the "Securitized Costs") is presented in Attachment 1.

COMPLIANCE WITH ISSUANCE STANDARDS

The Financing Order requires Petitioner to confirm, using the methodology approved therein, that the actual terms of the Securitized Utility Tariff Bonds result in compliance with the standards set forth in the Financing Order. These standards are:

1. The financing of Qualified Extraordinary Costs and Financing Costs will provide quantifiable net present value benefits to retail customers, greater than would be achieved compared to the customary method of financing

with respect to the Qualified Extraordinary Costs in retail customer rates (See Attachment 2, Schedule D);

2. The Securitized Utility Tariff Bonds will be issued in one series comprised of one or more tranches having a scheduled final payment of years and legal final maturities not exceeding years from the date of issuance of such series (See Attachment 2, Schedule A);

3. The Securitized Utility Tariff Bonds may be issued with an original issue discount, additional credit enhancements, or arrangements to enhance marketability provided that the Petitioner certifies that the original issue discount, additional credit enhancements, or arrangements to enhance marketability will provide quantifiable net present value benefits greater than its cost; and

4. The structuring, marketing and pricing of the Securitized Utility Tariff Bonds is certified by the Petitioner to result in the lowest Securitized Utility Tariff Charges consistent with market conditions at the time the Securitized Utility Tariff Bonds were priced and the terms of the Financing Order.

5. The amount of [Securitized Utility Tariff Costs] to be financed using Securitized Utility Tariff Bonds are $_.

6. The recovery of such Securitized Utility Tariff Costs is just and reasonable and in the public interest.

7. The estimate of the amount of Financing Costs that may be recovered through Securitized Utility Tariff Charges is $_.

8. The period over which the Securitized Utility Tariff Costs and Financing Costs may be recovered is years.

9. Add other findings from Section 393.1700.2.(3)(c).

ACTUAL TERMS OF ISSUANCE

Securitized Utility Tariff Bonds: _____

Securitized Utility Tariff Bond Issuer: [**SPE**]

Trustee: _____

Closing Date:_____, 202[3]

Bond Ratings: [S&P AAA(sf), Moody's Aaa(sf)]

Amount Issued: $_____

Securitized Utility Tariff Bond Upfront Financing Costs: See Attachment 1, Schedule B.

Securitized Utility Tariff Bond Ongoing Financing Costs: See Attachment 2, Schedule B.

Tranche	Coupon Rate	Scheduled Final Payment	Legal Final Maturity
A-1	__ %	__	__

Effective Annual Weighted Average Interest Rate of the Securitized Utility Tariff Bonds:	[____]%
Life of the Securitized Utility Tariff Bonds:	_____ Years
Weighted Average Life of the Securitized Utility Tariff Bonds:	_____ Years
Call provisions (including premium, if any):	N/A
Target Amortization Schedule:	Attachment 2, Schedule A
Scheduled Final Payment Dates:	Attachment 2, Schedule A
Legal Final Maturity Dates:	Attachment 2, Schedule A
Payments to Investors:	Semi-annually Beginning _____ , 20__
Initial annual Servicing Fee as a percent of original Securitized Utility Tariff Bond principal balance:	[0.05]%

INITIAL SECURITIZED UTILITY TARIFF CHARGE

Table I below shows the current assumptions for each of the variables used in the calculation of the initial Securitized Utility Tariff Charges.

TABLE I	
Input Values For Initial Securitized Utility Tariff Charges	
Applicable period: from_____to _____	
Forecasted retail kWh/kW sales for the applicable period:	$ _____
Securitized Utility Tariff Bond debt service for the applicable period	$ _____
Percent of billed amounts expected to be charged-off:	$ _____
Forecasted % of Billing Paid in the Applicable Period:	$ _____
Forecasted retail kWh/kW sales billed and collected for the applicable period.	$ _____
Forecasted annual ongoing financing costs (excluding debt service):	$ _____
Initial Securitized Utility Tariff Bond outstanding balance:	$ _____
Target Securitized Utility Tariff Bond outstanding balance as of: __/_/_:	$ _____
Total Securitized Revenue Requirement for applicable period:	$ _____

IDENTIFICATION OF SPE

The owner of the Securitized Utility Tariff Property will be:_____ [**SPE**].

EFFECTIVE DATE

In accordance with the Financing Order, the Securitized Utility Tariff Charge shall be automatically effective upon the Petitioner's receipt of payment in the amount of $_____ from [**SPE**], following Petitioner's execution and delivery to [**SPE**] of the Bill of Sale transferring Petitioner's rights and interests under the Financing Order and other rights and interests that will become Securitized Utility Tariff Property upon transfer to [**SPE**] as described in the Financing Order.

NOTICE

Copies of this filing are being furnished to the parties on the attached service list. Notice to the public is hereby given by filing and keeping this filing open for public inspection at Petitioner's corporate headquarters.

AUTHORIZED OFFICER

The undersigned is an officer of Petitioner and authorized to deliver this Issuance Advice Letter on behalf of Petitioner.

Respectfully submitted,

EVERGY MISSOURI WEST, INC. D/B/A
EVERGY MISSOURI WEST

By: _____
Name: _____
Title: _____

ATTACHMENT 1
SCHEDULE A
CALCULATION OF SECURITIZED UTILITY TARIFF COSTS AND FINANCING COSTS

Securitized Utility Tariff Costs to be financed: $_____

Upfront Financing Costs $_____

TOTAL COSTS TO BE FINANCED $_____

ATTACHMENT 1

SCHEDULE B

ESTIMATED UPFRONT FINANCING COSTS

UP-FRONT FINANCING COSTS	
Legal Fees (Company, Issuer, Trustee, and Underwriter)	$
Underwriters' Fees	$
Auditor's Fee	$
Structuring Advisor's Fee	$
Information Technology Programming Costs	$
Costs of the Commission	$
Original Issue Discount	$
SEC Registration Fee	$
SEC Registration Fee	$
Bond Rating Fees	$
Miscellaneous	$
TOTAL UP-FRONT FINANCING COSTS FINANCED	$

Note: Differences that result from the Estimated Up-front Financing Costs financed being more or less than the Actual Upfront Financing Costs incurred will be resolved through the process described in the Financing Order.

ATTACHMENT 2
SCHEDULE A
SECURITIZED UTILITY TARIFF BOND REVENUE REQUIREMENT INFORMATION

TRANCHE				
Payment Date	Principal Balance	Interest	Principal	Total Payment
	$_____			
_____	_____	$_____	$_____	$_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

ATTACHMENT 2

SCHEDULE B

ONGOING FINANCING COSTS

	ANNUAL AMOUNT
Servicing Fee (Evergy Missouri West as Servicer) (0.05% of initial Securitized Utility Tariff Bond principal amount)	$ _____
Administration Fee	$ _____
Trustee's/Trustee's Counsel Fees and Expenses	$ _____
Auditing/Accounting Fees	$ _____
Legal Fees/Expenses	$ _____
Rating Agency Surveillance Fees	$ _____
Return on Capital Account	$ _____
Printing/Edgarizing Fees	$ _____
Independent Director's or Manager's Fees	$ _____
Miscellaneous	$ _____
TOTAL ONGOING FINANCING COSTS (with Evergy Missouri West as Servicer)	$ _____
Ongoing Servicers Fee (Third Party as Servicer) (0.60% of principal amount)	$ _____
TOTAL ONGOING FINANCING COSTS (Third Party as Servicer	$ _____

Note: The amounts shown for each category of operating expense on these attachments are the expected expenses for the first year of the Securitized Utility Tariff Bonds. Securitized Utility Tariff Charges will be adjusted at least annually to reflect any changes in Ongoing Financing Costs through the true-up process described in the Financing Order.

ATTACHMENT 2

SCHEDULE C

CALCULATION OF SECURITIZED UTILITY TARIFF CHARGES

Year	Securitized Utility Tariff Bond Payments[1]	Ongoing Costs[2]	Total Nominal Securitized Utility Tariff Charge Requirement[3]	Present Value of Securitized Utility Tariff Charges[4]
1	$ _____	$ _____	$ _____	$ _____
2	$ _____	$ _____	$ _____	$ _____
3	$ _____	$ _____	$ _____	$ _____
4	$ _____	$ _____	$ _____	$ _____
5	$ _____	$ _____	$ _____	$ _____
6	$ _____	$ _____	$ _____	$ _____
7	$ _____	$ _____	$ _____	$ _____
8	$ _____	$ _____	$ _____	$ _____
9	$ _____	$ _____	$ _____	$ _____
10	$ _____	$ _____	$ _____	$ _____
11	$ _____	$ _____	$ _____	$ _____
12	$ _____	$ _____	$ _____	$ _____
13	$ _____	$ _____	$ _____	$ _____
14	$ _____	$ _____	$ _____	$ _____
Total	$ _____	$ _____	$ _____	$ _____

[1] From Attachment 2, Schedule A.
[2] From Attachment 2, Schedule B.
[3] Sum of Securitized Utility Tariff Bond payments and ongoing costs.
[4] Calculated in accordance with the methodology cited in the Financing Order.

ATTACHMENT 2
SCHEDULE D
COMPLIANCE WITH SECTION 393.1700

Quantifiable Benefits Test:[5]

	Securitization	FAC/PISA 20 years	Amortization: 15 Years
Storm Uri costs (incl. carrying)	$[●]	$[●]	$[●]
Up-front financing costs	$[●]		-
Total	$[●]	$[●]	$[●]
Carrying cost	[●]%	[●]%	[●]%
Term (years)	[●]	[●]	[●]
Monthly payment	$[●]		
Ongoing costs (monthly)	$[●]		$[●]
Monthly revenue requirement	$[●]	$[●]	$[●]
Total payments/Collected	$[●]	$[●]	$[●]
Securitization benefit		**$[●]**	**$[●]**
Discount Rate (5.06%)	[●]%	[●]%	[●]%
NPV payments discounted @ Discount Rate	$[●]	$[●]	$[●]
NPV securitization benefit		**$[●]**	**$[●]**

[5] Calculated in accordance with the methodology cited in the Financing Order.

P.S.C. MO. No. _____ _____ Revised Sheet No. _____

Canceling P.S.C. MO. No. _____ _____ Original Sheet No. _____

For Missouri Retail Service

SECURITIZED UTILITY TARIFF
RIDER

APPLICABILITY

The Securitized Utility Tariff Rider is a non-bypassable charge paid by all existing or future retail customers receiving electrical service from an electrical corporation or its successors or assignees under Commission-approved rate schedules (except for customers receiving electrical service under special contracts on August 28, 2021), even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in Missouri.

The Securitized Utility Tariff Rider will be applicable to customers newly served by the Company due to organic growth within its existing service territory or expansion of the Company's service territory by way of a new certificate of convenience and necessity or a new territorial agreement. The Securitized Utility Tariff Rider will not apply to customers in other utility jurisdictions merged with, or acquired by, the Company in the future. This charge will continue to be applicable to any customers (new or existing) currently served by the Company, but subsequently served by some other electric service provider as a result of a territorial agreement or modification of a territorial agreement, whether the other electric service provider is regulated by this Commission or exempted from regulation by this Commission by any current or future law. In such instance applicable kWh shall be included in all applicable calculations contained herein.

The Securitized Utility Tariff Rider is applicable to energy consumed under the Company's various rate schedules, except for customers receiving electrical service under special contracts as of August 28, 2021. Charges pursuant to this Schedule SUR shall be presented on each customer's bill as a separate line item including the rate applicable to each kWh and the amount of the total charge. Schedule SUR shall remain applicable to each kWh for so long as the securitized utility tariff bonds are outstanding and until all financing costs have been paid in full, and any necessary true-ups have been made.

Schedule SUR was authorized in Case No. EF-2022-0155, The Petition of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for a Financing Order Authorizing the Financing of Qualified Extraordinary Storm Costs Through an Issuance of Securitized Utility Tariff Bonds. A Special Purpose Entity ("SPE"), or its successors or assignees, as applicable, is the owner of the securitized utility tariff property which includes all rights to impose, bill, charge, collect, and receive the relevant Securitized Utility Tariff Charge and to obtain periodic adjustment to such charges. Company, as servicer or other third-party servicer, shall act as SPE's collection agent for the relevant Securitized Utility Tariff Charge, separate and apart from the other rates, riders, and charges specified in this Tariff.

P.S.C. MO. No. _____ _____ Revised Sheet No. _____

Canceling P.S.C. MO. No. _____ _____ Original Sheet No. _____

For Missouri Retail Service

SECURITIZED UTILITY TARIFF
RIDER

APPLICABILITY (continued)

Rates under this Schedule SUR will be adjusted no less frequently than annually in order to ensure that the expected collection of amounts authorized in Case No. EF-2022-0155 is adequate to pay when due, pursuant to the expected amortization schedule, principal and interest on the bonds and pay on a timely basis other financing costs. Schedule SUR rates shall be calculated by dividing the total securitized revenue requirement by the forecasted period projected sales at generation voltage and multiplied by the voltage expansion factor, as shown in the following formula:

$SURR_x = ((TSRR + CA_{RP} + \text{True-Up Amount}_{NextRP}) \div S_{RP}) \times VAF_x$
where,

SURR = Schedule SUR Rate for the period, applicable to indicated VAF;

TSRR = Total Securitized Revenue Requirement shall consist of the following items:

1. Principal
2. Interest
3. [INSERT ADDITIONAL ITEMS AS DETAILED IN FINANCING ORDER PRIOR TO ISSUANCE OF BONDS], and
4. Bad debts net of prior period collections.
5. For each of the above, separately, any variations calculated through a reconciliation of the current period TSRR actuals to the projections, forecasts, or estimates to the extent that actuals are available.

CA_{RP} = An allowance to the extent necessary to align revenue recovery with payment obligations. This allowance will be returned to ratepayers when no longer necessary;

S_{RP} = Forecasted recovery period retail sales to all applicable customers, at the generation level;

VAF_x = Expansion factor by voltage level[1]

VAF_{Trans} = Expansion factor for transmission voltage customers

VAF_{Sub} = Expansion factor for substation to transmission voltage customers VAF_{Prim} = Expansion factor for primary to substation voltage customers VAF_{Sec} = Expansion factor for lower than primary voltage customers

[1]In the event more delineated voltage adjustments become implemented in the Fuel Adjustment Clause, such service levels shall be incorporated into this rider at the next true-up.

P.S.C. MO. No. _____ _____ Revised Sheet No. _____

Canceling P.S.C. MO. No. _____ _____ Original Sheet No. _____

For Missouri Retail Service

SECURITIZED UTILITY TARIFF
RIDER

RECOVERY PERIODS

"Recovery Period" (RP) means the period for which a given SURR tariff sheet is in effect. The initial Recovery Period shall begin on the effective date of the first tariff providing an effective SURR, and conclude the day prior to the next occurring [Insert the first calendar day of 2 months 6 months apart to optimize operation in conjunction with payment dates]. Subsequent RPs will occur until all TSRR has been paid in full.

RPs will generally begin [INDICATED DATES], unless required to accommodate a True-Up, and will be 12 months in duration unless required to accommodate a True-Up. If an RP is less than 12 months in duration the Recovery Period Amount and related calculations shall be prorated accordingly.

To accommodate timing of SURR tariff sheet filings, some required data contemplated to be actual may be projected as of the time of filing. To the extent projected data for one or more months is used to calculate subsequent SURRs, in subsequent SURR filings such projections will be reconciled against actual data as it becomes available.

TRUE-UP

The Company as servicer shall file proposed SURR tariff sheets implementing a True-Up and bearing a 30-day effective date, no less frequently than annually. At the servicer's discretion, SURR tariff sheet filings implementing a True-Up may be made semi-annually, or more frequently, by tariff filing bearing a 30-day effective date. All supporting materials shall be included in such filings. Workpapers and necessary documentation supporting each element of the TSRR shall be included under affidavit with each SURR tariff sheet filing. If cost to Evergy to perform its servicing and administrative services under the Servicing Agreement and the Administration Agreement is less than what the Company is paid for those services, then that difference in cost shall be tracked by Evergy and included in a regulatory liability account to be addressed in Evergy's next general rate case.

The Company shall time the tariff filing such that the effective date of the tariff is the first day of a calendar month.

SURR tariff sheet filings implementing a True-Up and incorporating revised SURRs calculations shall be made quarterly beginning twelve months prior to the final scheduled payment date of the last tranche of the securitized utility tariff bonds.

SECURITIZED UTILITY TARIFF
RIDER

TRUE-UP AND SURR TARIFF SHEET FILING FORMULA

$$\text{True-Up Amount}_{\text{NextRP}} = \text{Periodic Payment Requirement}_{\text{Current RP}} - \text{SUTC Remittnces}_{\text{CurrentRP}}$$

Where;

Periodic Payment Requirement = The portion of the TSRR used to calculate the current SURRs applicable to the current RP.

SUTC Remittances = The SUR revenue received or projected to be received during the current RP resulting from the application of current SURR.

To accommodate timing of SURR tariff sheet filings, some required data contemplated to be actual may be projected as of the time of filing. To the extent projected data for one or more months is used to calculate subsequent SURRs, in subsequent SURR filings such projections will be reconciled against actual data as it becomes available.

At the time of each True-Up, the servicer will provide a new TSRR amount for the coming RP which shall incorporate any variations calculated through a reconciliation of the current period TSRR actuals to the projections, forecasts, or estimates to the extent that actuals are available. The Company will provide its best available S_{RP} forecast, and all supporting information.

To accommodate RPs of varying lengths and true-up of projected data, S_{RP} forecasts by calendar month relied upon for SURR tariff sheet calculation shall be provided to Staff and retained by the Company.

P.S.C. MO. No. _____ _____ Revised Sheet No. _____

Canceling P.S.C. MO. No. _____ _____ Original Sheet No. _____

For Missouri Retail Service

SECURITIZED UTILITY TARIFF
RIDER

ADDITIONAL TERMS

1. Treatment of partial payments on customer bills – the first dollars collected would be attributed to past due balances, if any. To the extent that a customer remits an amount less than the full amount due for a given prior or current period, the charges under Schedule SUR shall be prorated with other amounts due for that given prior or current period bill.
2. Treatment for Net Metering Rates – For customers subject to billing under the Net-metering Easy Connection Act (Act), if the electricity supplied by the Company exceeds the electricity generated by the customer-generator during a billing period, the customer-generator shall be billed to the applicable SURR for each kWh as netted pursuant to the terms of the Act and this tariff. If the electricity generated by the customer-generator exceeds the electricity generated by the customer-generator during a billing period, the customer shall not be issued a credit based on the SURR applicable to each kWh as netted pursuant to the terms of the Act and this tariff, nor shall the SURR be considered to be part of the avoided fuel cost of the Company for purposes of the Act. For customers who are authorized to back-flow energy under some other provision of law, or for any portion of back-flowed energy that exceeds that authorized under the terms of applicable net-metering provisions, the SURR shall be applicable to each kWh provided by the Company, without any offset.
3. Inapplicability of Discounts – Charges under Schedule SUR are payable in full and are not eligible for any discount.
4. Filing Procedure

   Initial Rate Filing: In accordance with the provisions of sections 393.1700.2(3)(c)i and 393.1700.2(3)(h), prior to the issuance of bonds, the Company shall submit to the Commission, no later than one business day after the pricing of the securitized utility tariff bonds, an issuance advice letter and revised Schedule SUR tariff bearing a proposed effective date being the date the securitized utility tariff bonds are to be issued. The issuance advice letter shall report the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the Commission may require. The Company may proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth business day after receipt of the issuance advice letter, the Commission issues a disapproval letter directing that the securitized utility tariff bonds as proposed shall not be issued and the basis for that disapproval.

   For all filings - On or before each filing, the Company shall prepare and file under affidavit the workpapers and supporting documentation supporting the Total Securitized Revenue Requirement and SUR Rates being filed, ensuring that all SUR Rates in effect for a current period are published at all times bills are rendered for service at that rate, and an SUR Rate is not applied to usage that occurred prior to the effective date of the SUR Rate.

SECURITIZED UTILITY TARIFF
RIDER

SECURITIZED REVENUE REQUIREMENT AND SUR RATE

These rates shall apply to the Billing Months on and after [NAME OF CALENDAR MONTH FOLLOWING SHEET EFFECTIVE DATE].

EXAMPLE LINE NAMES AND AMOUNTS

[AFTER INITIAL FILING, ALTERNATE BETWEEN TWO SHEETS TO MAINTAIN

PRESENCE IN TARIFF OF EFFECTIVE RATES DURING OVERLAP MONTH]

1	Principal and Interest		$33,483,107
2	Prior Securitized Revenue Requirement True-Up Amount	+	$0
3	Other Financing Costs	+	$0
4	Total Securitized Revenue Requirement	=	$33,483,107
5	Forecasted Sales at Generation Level (S_{RP}) for December 2021 through November 2021	÷	8,848,730,509
6	SUR Rate	=	$0.00378
	Loss Adjusted SUR Rates		
7	Secondary (SUR Rate x VAF_{Sec} 1.0426) per kWh	=	$0.00395
8	Primary (SUR Rate x VAF_{Prim} 1.0268) per kWh	=	$0.00389
9	Substation (SUR Rate x VAF_{Sub} 1.0133) per kWh	=	$0.00383
10	Transmission (SUR Rate x VAF_{Trans} 1.0100) per kWh	=	$0.00382

ESTIMATED UPFRONT FINANCING COSTS

UPFRONT FINANCING COSTS		
Legal Fees (Company, Issuer, Trustee, and Underwriter)	$	3,025,000
Auditor's Fee	$	1,000,000
Structuring Advisor Fee	$	200,000
Information Technology Programming Costs	$	70,000
Costs of the Commission	$	TBD
Original Issue Discount	$	TBD
Underwriters' Fees		0.40%
SEC Registration Fees		0.00920%
Bond Rating Fees		0.1325%
Miscellaneous	$	90,000
TOTAL UPFRONT FINANCING COSTS FINANCED	**$**	**6,025,312**

ESTIMATED ONGOING FINANCING COSTS

		ANNUAL AMOUNT
Servicing Fee (Evergy Missouri West as Servicer) (0.05% of initial Securitized Utility Tariff Bond principal amount)		0.05%
Administration Fee	$	75,000
Trustee's/Trustee's Counsel Fees and Expenses	$	5,000
Auditing/Accounting Fees	$	75,000
Legal Fees/Expenses	$	35,000
Rating Agency Surveillance Fees	$	45,000
Return on Capital Account		0.34%
Printing/Edgarizing Fees	$	10,000
Independent Manager's Fees	$	TBD
Miscellaneous	$	10,000
TOTAL ONGOING FINANCING COSTS (with Evergy Missouri West as Servicer)	**$**	**508,905**
Ongoing Servicers Fee (Third Party as Servicer) (0.60% of principal amount)	$	0.60%
TOTAL ONGOING FINANCING COSTS (Third Party as Servicer)	**$**	**2,174,340**

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Jerry L. Countryman for Change of Electric Supplier from Empire District Electric Company d/b/a Liberty to White River Valley Electric Cooperative, Inc.	)))))	**File No. EO-2022-0226**

REPORT AND ORDER

ELECTRIC

§4.1. Change of suppliers
Pursuant to Section 393.106.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential.

§4.1. Change of suppliers
Pursuant to Section 394.315.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential, and the Commission has jurisdiction over rural electric cooperatives for that purpose.

§4.1. Change of suppliers
Where applicant did not present evidence (1) that there were problems with reliability, voltage, safety, etc. with service from his current electric supplier; (2) that the current supplier is unable to meet his needs regarding the amount or quality of power; (3) that the power supplied presents a health or safety issue; (4) that the power supplied damaged his equipment; (5) that the provision of electric service to his residence negatively impacts economic development in the area; or (6) that the service provided by his current supplier creates any burden on him not related to the cost of electricity itself; the Commission found that granting applicant's request for a change of electric supplier would not be in the public interest.

§4.1. Change of suppliers
Where applicant stated that one of the reasons for requesting a change of electric supplier was the raising of rates by his current supplier, the Commission found that changing suppliers based on rate differential was prohibited by Section 393.106.2, RSMo 2016, and, therefore, not an appropriate ground for granting such a request.

§15. Cooperatives
Pursuant to Section 394.315.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in the public

interest for a reason other than rate differential, and the Commission has jurisdiction over rural electric cooperatives for that purpose.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Jerry L. Countryman for Change of Electric Supplier from Empire District Electric Company d/b/a Liberty to White River Valley Electric Cooperative, Inc.	)))))	**File No. EO-2022-0226**

REPORT AND ORDER

Issue Date: November 17, 2022

Effective Date: December 17, 2022

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Jerry L. Countryman for Change of Electric Supplier from The Empire District Electric Company d/b/a Liberty to White River Valley Electric Cooperative, Inc.	)))))	**File No. ER-2022-0226**

PARTIES & APPEARANCES

APPLICANT JERRY L. COUNTRYMAN:

Jerry L. Countryman, 451 N. Countryman Road, Ozark, Missouri 65721.

THE EMPIRE DISTRICT ELECTRIC COMPANY (LIBERTY):

Diana C. Carter, Director, Legal Services, Liberty Utilities, 428 E. Capitol Avenue, Suite 303, Jefferson City, Missouri 65101.

WHITE RIVER VALLEY ELECTRIC COOPERATIVE:

Christiann D. Horton, Carnahan Evans PC, 2805 S. Ingram Mill Road, P.O. Box 10009, Springfield, Missouri 65808

STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

J. Scott Stacey, Senior Staff Counsel, Public Service Commission, 200 Madison Street, P.O. Box 360, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Kenneth J. Seyer

REPORT AND ORDER

I. Procedural History

On February 25, 2022,[1] Jerry L. Countryman filed an *Application for Change of Electrical Service Provider* ("Application") with the Commission requesting a change of electric supplier from The Empire District Electric Company d/b/a Liberty to White River Valley Electric Cooperative, Inc. (White River).[2]

On February 28, the Commission ordered that Liberty and White River be made parties to this proceeding and that they respond to the Application.[3] Both of those parties did so on March 30.

On April 13, the Staff of the Commission filed a *Staff Recommendation* in which it recommended that the Commission deny Mr. Countryman's Application because he has not shown by the preponderance of the evidence that it is in the public interest for him to switch providers from Liberty to White River.[4]

On July 21, the Commission ordered a procedural schedule that set an evidentiary hearing for October 3.[5] Written direct and rebuttal testimony was filed by the parties.

A joint list of issues was filed on September 22. The filing listed a single issue to be decided by the Commission:

> Is it in the public interest for a reason other than a rate differential for the Commission to order a change of electric service provider from Empire District Electric Company d/b/a Liberty to White River Valley Electric Cooperative, Inc. for Jerry Countryman's asserted reason (having only one electric service provider for his two adjacent real estate parcels)?[6]

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[1] Unless otherwise noted, all dates refer to 2022.
[2] Exh. 3, *Application for Change of Electrical Supplier* (filed February 25).
[3] *Order Directing Notice, Adding Parties, and Directing Responses to Application* (issued February 28).
[4] *Staff Recommendation* (filed April 13).
[5] *Order Setting Procedural Schedule* (issued July 21).
[6] *Joint List of Issues, List and Order of Witnesses, Order of Opening Statements and Order of Cross Examinations* (filed September 22).

Subsequently, the Commission held an evidentiary hearing on October 3.

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. Liberty is an "electrical corporation" and "public utility," as those terms are defined by Section 386.020, RSMo.[7]

2. White River is a rural electric cooperative.

3. Staff is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

4. Jerry L. Countryman currently resides at 451 N. Countryman Road, Ozark, Missouri.[8]

5. Mr. Countryman is a current customer of Liberty, receiving electric service for his residence and the five acre parcel upon which it is located. Liberty began providing electric service to Mr. Countryman's residence in 1977.[9]

6. In 2010, upon the death of his mother, Mr. Countryman inherited from his parents' trust a 22 ¼ acre parcel adjacent to his five acre parcel upon which stand a barn and shed.[10]

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[7] All statutory references are to the Revised Statutes of Missouri, as codified in 2016, unless otherwise noted.
[8] Exh. 1, *Statement of Jerry Countryman*, p. 1 (filed July 19); Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 3.
[9] Exh. 1, *Statement of Jerry* Countryman, p. 1 (filed July 19); Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 3; Tr. p. 24.
[10] Exh. 1, *Statement of Jerry Countryman*, p. 1 (filed July 19); Tr., pp. 22, 24, 27.

7. From the 1940s through to the present, White River has provided electrical service to the 22 ¼ acre parcel.[11]

8. There is no territorial agreement between Liberty and White River in the area of Mr. Countryman's two parcels.[12]

9. Mr. Countryman filed an application with the Commission requesting that his electric service provider for his residence be switched from Liberty to White River.[13]

10. In his Application, for the reason he was requesting a change of electric supplier, Mr. Countryman wrote the following:

> Due to inheritance of adjoining property, which is serviced by White River Valley Coop. Adjoining property has been serviced by [White River] since 1940's. My house and 5 acres has been serviced by Empire (now Liberty) since 1977. I do not need two electric utilities.[14]

11. Mr. Countryman did not allege in the Application, and did not communicate to Staff, that he was experiencing abnormal power, voltage, current or other problems with the electric service he was receiving from Liberty, nor did he express any safety concerns.[15] Likewise, Mr. Countryman presented no evidence regarding electric service problems or safety concerns.[16]

12. Mr. Countryman stated to Staff that he wanted to change his electric service to White River because Liberty's rates were increasing.[17]

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[11] Exh. 1, *Statement of Jerry Countryman*, p. 1 (filed July 19); *Rebuttal Testimony and Exhibit A of Beau Jackson*, p.2.
[12] Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 3;Exh. 200, *Rebuttal Testimony and Exhibit A of Beau Jackson*, p.1; Tr. p. 38.
[13] Exh. 3, *Application for Change of Electrical Supplier* (filed February 25).
[14] Exh. 3, *Application for Change of Electrical Supplier* (filed February 25).
[15] Exh. 3, *Application for Change of Electrical Supplier* (filed February 25); Exh. 300, *Rebuttal Testimony of Alan J. Bax*, Sch. 2 AJB r2, p. 10.
[16] Tr. 19-31.
[17] Exh. 300, *Rebuttal Testimony of Alan J. Bax*, Sch. 2 AJB r2, p. 10; Tr. 25.

13. Mr. Countryman has created a trust for the benefit of his sons that includes the five acre and 22 ¼ acre properties in question. Mr. Countryman stated he submitted his Application because he is "trying to clear up things where it's down to one thing, one utility, et cetera."[18] Mr. Countryman's long range plans – in five to eight years – include converting a portion of the barn into a one-bedroom apartment, vacating his current house, and moving into the apartment in the barn.[19]

14. Liberty has been granted a certificate of convenience and necessity from the Commission to provide service to the five acre parcel that is currently Mr. Countryman's residence.[20]

15. Liberty provides safe and reliable service to Mr. Countryman at the five acre parcel.[21]

16. When Liberty loses a customer, its remaining customers are negatively impacted because Liberty's total cost to provide electric service to the public is shared by all of its customers.[22]

17. White River would like to serve Mr. Countryman's current residence, but believes the law prohibits it from doing so.[23]

18. White River estimates that, in order to provide electric service to Mr. Countryman's residence, it would have to add two to three poles and 300-500 feet of line at a cost of $8,000 to $10,000.[24]

[18] Tr. 22.
[19] Tr. 26.
[20] Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 5.
[21] Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 5.
[22] Exh. 100, *Rebuttal Testimony of Jeffery Westfall*, p. 5.
[23] Tr. 37.
[24] Tr. 36-38.

III. Conclusions of Law

A. Although Mr. Countryman 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.

B. Since Mr. Countryman brought the change of supplier application, he bears the burden of proof.[25] The burden of proof is the preponderance of the evidence standard.[26] In order to meet this standard, Mr. Countryman must convince the Commission it is "more likely than not" that his application should be granted.[27]

C. Section 393.106.2, RSMo, addresses the right of electrical corporations to provide electric service and the procedure to change electric suppliers. It states, in part:

> Once an electrical corporation . . . 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. Except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing corporations pursuant to this chapter.

[25] 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.

[26] *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).

[27] *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999).

D. Similarly, Section 394.315.2, RSMo, addresses the right of rural electric cooperatives to provide electric service and the procedure to change electric suppliers. It states, in part:

> Once a rural electric cooperative . . . 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, and the commission is hereby given jurisdiction over rural electric cooperatives to accomplish the purpose of this section. 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. Except as provided herein, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative, and except as provided in this section, nothing contained herein shall affect the rights, privileges or duties of existing cooperatives pursuant to this chapter.[28]

IV. Decision

The Commission has stated that customer preference does not suffice as the only basis for ordering a change in supplier.[29] 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;

[28] Sections 392.106 and 393,315, RSMo, are commonly referred to as the anti-flip-flop statutes.
[29] *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.

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;

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:
(1) the distance involved and cost of any new extension, including the burden on others -- for example, the need to procure private property easements, and
(2) 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)(2) 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.[30]

In this case, Liberty has provided electric service to Mr. Countryman's residence on the five acre parcel for over 40 years. Mr. Countryman cites no problems with reliability, voltage, safety, etc. in the electric service received from Liberty. Mr. Countryman does

[30] Report and Order, *In the Matter of the Application of Brandon Jessip for Change of Electric Supplier from Empire District Electric to New-Mac Electric*, 27 Mo. P.S.C. 3d 288, 298-299, File No. EO-2017-0277 (Dec. 20, 2017); 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), File No. EO-88-196.

not allege that Liberty is unable to meet his needs regarding the amount or quality of power; that power supplied by Liberty presents a health or safety issue; that Liberty's power supply damaged his equipment; that Liberty's provision of electric service to his residence negatively impacts economic development in the area; or that Liberty's electric service creates any burden on him not related to the cost of electricity itself. In fact, Mr. Countryman admitted to Staff that he wanted to change suppliers because Liberty was raising its rates.

If Mr. Countryman's request to change electric suppliers is approved, both of the utilities involved would be negatively impacted. Although White River would gain Mr. Countryman as a customer, in order to do so it would have to add poles and transmission lines at an estimated cost of $8,000-$10,000 – a cost that would have to be shared by all of White River's customers. Similarly, but conversely, losing Mr. Countryman as a customer would negatively impact Liberty because Liberty's total cost to provide electric service to the public is shared by all of its customers.

Even if it is in the public interest for Mr. Countryman to prevail, the Commission must also determine that the reason Mr. Countryman 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.[31] 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.

After considering all the factors described above, the Commission concludes that

[31] 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).

granting Mr. Countryman's request for a change of electric supplier would not be in the public interest. In addition, one of the reasons stated by Mr. Countryman that he requested a change in supplier was the raising of rates by Liberty. Changing electric service suppliers based on rate differential is prohibited by Section 393.106.3, RSMo, so Mr. Countryman'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 as pleaded to the law to reach its conclusions, the Commission concludes that the pleadings support the conclusion that Mr. Countryman 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. Countryman's application will be denied.

THE COMMISSION ORDERS THAT:

1. Jerry L. Countryman's application for a change of electric supplier is denied.
2. This report and order shall become effective on December 17, 2022.
3. This file shall close on December 18, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and Kolkmeyer CC., concur and certify compliance with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's Request for Authority to Implement a General Rate Increase for Electric Service	))))	**File No. ER-2022-0129** Tracking Nos. YE-2022-0200 and YE-2022-0201
In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement a General Rate Increase for Electric Service	))))	**File No. ER-2022-0130** Tracking No. YE-2022-0202

AMENDED REPORT AND ORDER

ACCOUNTING

§10. Additions, retirements and replacements

The Commission found that the unrecovered investment in a retired generation asset should not be combined in a single amortization; rather, it is more appropriate and transparent to keep the two accounts distinct and amortize them separately.

§10. Additions, retirements and replacements
§25. Maintenance, repairs and depreciation

In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.

§10. Additions, retirements and replacements
§25. Maintenance, repairs and depreciation

The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.

§29. Property not used

The Commission found that although an initial investment may have been prudent when made, that does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful.

§29. Property not used
Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable. Installing an Automated Metering Infrastructure (AMI) shut-off capable (SD) meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years into a 20-year depreciable life.

DEPRECIATION

§1. Generally
§3. Reports, records and statements
§9. Generally
§17. Life of property
§31. Electric and power
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.

§1. Generally
§22. Life of property and salvage
§31. Electric and power
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.

DISCRIMINATION

§10. Free service
§11. Inequality of rates
§19. Bases for classification and differences
§22. Electric and power
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.

ELECTRIC

§18. Depreciation
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.

§18. Depreciation
§45. Decommissioning costs
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.

§19. Discrimination
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.

§20. Rates
The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order did not approve any traditional ratemaking structure for residential customers.

§20. Rates
The Commission found that although an initial investment may have been prudent when made, that does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful.

§31. Equipment
Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable. Installing an Automated Metering Infrastructure (AMI) shut-off capable (SD) meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years into a 20-year depreciable life.

§31. Equipment
§33. Maintenance
§39. Costs and expenses
§42. Planning and management
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.

§42. Planning and management
In finding that a party did not raise a serious doubt about Evergy's resource planning, the Commission found that the party did not adequately address undepreciated investment and also failed to address the fact that these coal plants are not solely Evergy's to control and determine a retirement date.

EVIDENCE, PRACTICE AND PROCEDURE

§6. Weight, effect and sufficiency
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.

§6. Weight, effect and sufficiency
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.

§6. Weight, effect and sufficiency
The Commission found that although an initial investment may have been prudent when made, that does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful.

§6. Weight, effect and sufficiency
Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable. Installing an Automated Metering Infrastructure (AMI) shut-off capable (SD) meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years into a 20-year depreciable life.

§6. Weight, effect and sufficiency
Because Subscription Pricing, absent other factors, is more likely than not to result in higher bills to customers, the Commission found it would likely result in unjust and unreasonable rates.

§6. Weight, effect and sufficiency
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.

§7. Competency
In finding that a party did not raise a serious doubt about Evergy's resource planning, the Commission found that the party did not adequately address undepreciated investment and also failed to address the fact that these coal plants are not solely Evergy's to control and determine a retirement date.

EXPENSE

§19. Future expenses
§54. Maintenance and depreciation; repairs and replacements
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.

RATES

§1. Jurisdiction and powers generally
§78. Optional rate schedules
§80. Kinds and forms of rates and charges in general
§84. Load, diversity and other factors
§104. Electric and power
§119. Rate design, class cost of service for electric utilities
The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order did not approve any traditional ratemaking structure for residential customers.

§8. Reasonableness generally
§106. Special charges; amount and computation
Because Subscription Pricing, absent other factors, is more likely than not to result in higher bills to customers, the Commission found it would likely result in unjust and unreasonable rates.

§21. Discrimination, partiality, or unfairness
§23. Efficiency of operation and management
§106. Special charges; amount and computation
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.

§31. Maintenance of service
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.

VALUATION

§26. Property not used or useful

Evergy argues that a certain Purchased Power Agreement (PPA) serves Missouri customers and as such is used and useful. The Commission found that evidence showed it is not needed to meet Missouri customer load, its costs have exceeded revenues in every month of the current rate case test year, and thus, it is not useful to Missouri customers or economic.

§43. Equipment and facilities
§68. Depreciation generally
§71. Methods of establishing rates or amounts
§73. Deduction or addition of funds or reserve

In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.

§47. Property not used and useful

The Commission found that although an initial investment may have been prudent when made, that does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful.

§47. Property not used and useful

Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable. Installing an Automated Metering Infrastructure (AMI) shut-off capable (SD) meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years into a 20-year depreciable life.

§68. Depreciation generally
§71. Methods of establishing rates or amounts

The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission’s practice of not allowing terminal net salvage values in depreciation rates.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Evergy Metro, Inc. d/b/a Evergy Missouri Metro's Request for Authority to Implement a General Rate Increase for Electric Service	))))	**File No. ER-2022-0129** Tracking Nos. YE-2022-0200 and YE-2022-0201
In the Matter of Evergy Missouri West, Inc. d/b/a Evergy Missouri West's Request for Authority to Implement a General Rate Increase for Electric Service	))))	**File No. ER-2022-0130** Tracking No. YE-2022-0202

AMENDED REPORT AND ORDER

Issue Date: December 8, 2022

Effective Date: December 18, 2022

TABLE OF CONTENTS

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AMENDED REPORT AND ORDER

On November 21, 2022, the Commission issued its *Report and Order* resolving the above captioned case. On December 2, 2022, the Staff of the Commission filed its motion for clarification which raised several questions of interpretation. On December 5, 2022, Evergy filed its response to Staff's motion, a request for reconsideration regarding two areas of concern, and as an alternative to its reconsideration request, Evergy also applied for rehearing. This *Amended Report and Order* makes changes to address many of the questions and areas of concern. No other party filed a request for reconsideration or rehearing.

All requests for rehearing filed regarding the Commission's *Report and Order* issued on November 21, 2022, are moot as this *Amended Report and Order* supplants it. This *Amended Report and Order* will be given a ten-day effective date. All applications for rehearing of this *Amended Report and Order* must be filed prior to this effective date.

Procedural History

On January 7, 2022, Evergy Metro, Inc. (EMM) and Evergy Missouri West, Inc. (EMW) (together, "Evergy") each submitted tariff sheets to produce net increases in their electric base rates, resulting in the two above captioned files. EMM requested a net increase in its electric base rates of approximately $43.9 million, an increase of 5.20%. EMW requested a net increase in its electric base rates of approximately $27.7 million, an increase of 3.85%. The cases have not been consolidated, but have had joint filings and a joint evidentiary hearing.[1]

The Commission set the test year in both files to be the twelve-month period ending June 30, 2021, updated through December 31, 2021, with the true-up period ending on

[1] 20 CSR 4240-2.110(3).

May 31, 2022. 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, both EMM's and EMW's submitted tariff sheets were suspended until December 6, 2022.[2]

The Commission directed notice of the filings and set an intervention deadline. The Commission granted requests to intervene in both File No. ER-2022-0129 and File No. ER-2022-0130 to the following entities: ChargePoint, Inc.; Missouri Energy Consumers Group (MECG); Renew Missouri Advocates; Sierra Club; Google, LLC; and Missouri Industrial Energy Consumers (MIEC). The following four additional parties were permitted to intervene in File No. ER-2022-0130: the City of St. Joseph; Velvet Tech Services, LLC; Dogwood Energy, LLC; and Nucor Steel Sedalia, LLC.

A series of five virtual public hearings were held from August 8 to August 10.[3] An evidentiary hearing was held from August 31 to September 9.[4] Prefiled testimony was given in addition to testimony taken during the evidentiary hearing. Initial post-hearing briefs were filed on October 14, and reply briefs on October 21.[5]

On various dates before and during the evidentiary hearing, the parties submitted four stipulations and agreements, which were approved by the Commission.[6] After the Commission approved the agreements, as presented by the parties, nine issues still remained unresolved. One issue, referenced as the Plant-In-Service Act (PISA) deferral

[2] Date references are to 2022 unless otherwise noted.
[3] Transcript Volume (Tr. Vol.) 2-6.
[4] Tr. Vol. 7-13.
[5] With the exception of MECG which was granted leave to file and filed its reply brief on October 22.
[6] *Order Approving Four Partial Stipulations and Agreements*, issued September 22, 2022.

issue, has been made moot as the Commission addressed it in a separate case, File No. ER-2023-0011.[7] This Report and Order addresses the eight remaining issues.

General Findings of Fact

1. EMM and EMW are two affiliated, certificated Missouri "electrical corporation[s]" and "public utilit[ies]" as those terms are defined at Section 386.020, RSMo (Supp. 2021). EMM and EMW generally serve the western half of Missouri.[8]

2. EMM serves approximately 301,200 customers in the Kansas City metropolitan area and surrounding cities of Missouri.[9]

3. EMW serves approximately 337,000 customers in the western and northwestern counties of Missouri, including the cities of Lee's Summit, St. Joseph, and Sedalia.[10]

4. Kansas City Power & Light (KCP&L) and Aquila were separate utilities prior to their merger in 2008. Following the merger, Aquila was renamed KCP&L Greater Missouri Operations (GMO). The former companies continued to operate as separate utilities with Great Plains Energy Inc. (GPE) acting as the holding company for the stock of both utilities. In 2018, GPE merged with Westar Energy Inc., with KCP&L and GMO being subsidiaries of the combined company. KCP&L and GMO later became Evergy Missouri Metro (EMM) and Evergy Missouri West (EMW).[11] Although some referenced documents in the present case may still include former company names, for convenience

[7] File No. ER-2023-0011, *In the Matter of the Application of Evergy Missouri West, Inc. d/b/a Evergy Missouri West for Authority to Implement Rate Adjustments Required by 20 CSR 4240-20.090(8) and the Company's Approved Fuel and Purchased Power Cost Recovery Mechanism,* Report and Order, effective November 19, 2022.
[8] Ex. 39 (EMM), Ives Direct, p. 5; and Ex. 113 (EMW), Ives Direct, p. 5.
[9] Ex. 39, Ives Direct, p. 5; and Ex. 113, Ives Direct, p. 5.
[10] Ex. 39, Ives Direct, pp. 5-6; and Ex. 113, Ives Direct, pp. 5-6.
[11] *See generally* File No. EM-2018-0012, *Report and Order* issued May 24, 2018; File No. EM-2016-0324, Staff's Investigation Report filed July 25, 2016; and File No. EM-2007-0374, *Report and Order* issued July 1, 2008.

this order will refer to the current monikers of EMM, EMW, Evergy when combined, or the Company.

5. The Office of the Public Counsel (OPC) is a party to this case pursuant to Section 386.710(2), RSMo (2016) and by Commission Rule 20 CSR 4240-2.010(10).

6. The Staff of the Commission (Staff) is a party to this case pursuant to Commission Rule 20 CSR 4240-2.010(10).

7. The parties presented eight issues for determination by the Commission, listed below:

a. Sibley;
b. AMI-SD;
c. Subscription Pricing;
d. Rate Design/Class Cost of Service;
e. Rate Base;
f. Resource Planning;
g. Streetlighting;
h. CNPPID PPA (Hydro PPA).[12]

8. By a Commission approved stipulation and agreement, the EMM revenue requirement has been set at $25.0 million and the revenue requirement for EMW has been set at $42.5 million.[13] These revenue requirement amounts may be affected by the decisions of the Commission in this Order, which the parties acknowledged in the stipulation by stating "Resolution of [the remaining disputed] issues will have an impact on the revenue requirement."[14]

9. Cost causation is the principle that costs should be borne by those who cause them to be incurred.[15]

[12] Order of Witnesses, filed August 30, 2022.
[13] Order Approving Four Partial Stipulations and Agreements, issued September 22, 2022, para. 1.
[14] Stipulation and Agreement, filed August 30, 2022, para. 1.
[15] Tr. Vol. 13, p. 943 (referencing the definition given in the book *Energy Utility Rate Setting* by Lowell E. Alt, Jr.).

General Conclusions of Law

A. EMM and EMW are public utilities and electrical corporations as those terms are defined in Subsections 386.020(15) and (43), RSMo (Supp. 2021). By the terms of the statute, EMM and EMW are electrical corporations and are subject to regulation by the Commission pursuant to Chapters 386 and 393, RSMo.

B. The Commission's subject matter jurisdiction over EMM and EMW's rate increase requests is established under Section 393.150, RSMo.

C. EMM and EMW can charge only those amounts set forth in their tariffs.[16]

D. Subsection 393.140(11), RSMo, gives the Commission authority to regulate the rates EMM and EMW may charge customers for electric service.

E. Utilities are required to provide safe and adequate service.[17]

F. In determining the rates EMM and EMW may charge their customers, the Commission is required to determine whether the proposed rates are just and reasonable.[18]

G. EMM and EMW have the burden of proving the proposed rates are just and reasonable, pursuant to Section 393.150.2, RSMo, "[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . electrical corporation . . . ."

H. In order to carry their burden of proof, EMM and EMW must meet the preponderance of the evidence standard.[19] In order to meet this standard, EMM and EMW

[16] Sections 393.130 and 393.140, RSMo.
[17] Sections 393.130 and 393.140, RSMo.
[18] Section 393.150.2, RSMo.
[19] *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).

must convince the Commission it is "more likely than not" that the proposed rate increases are just and reasonable.[20]

I. Witness credibility is solely a matter for the fact-finder, "which is free to believe none, part, or all of the testimony."[21]

J. Generally, one's belief, feeling, understanding, or thought about a matter does not constitute substantial evidence justifying or permitting a finding to that effect.[22]

K. In determining whether the rates proposed by EMM and EMW 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

[20] *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).
[21] *State ex rel. Public Counsel v. Missouri Public Service Comm'n*, 289 S.W.3d 240, 247 (Mo. App. 2009).
[22] *Dickey Co. v. Kanan,* 537 S.W.2d 430, 433-34 (Mo.App.1976).
[23] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).
[24] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

> speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[25]
>
> The Supreme Court has further indicated:
>
> '[R]egulation does not insure that the business shall produce net revenues.' But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[26]

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

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' … Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.[27]

M. An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence.[28]

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[25] *Bluefield,* at 692-93.
[26] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).
[27] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).
[28] *State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State*, 293 S.W.3d 63, 80 (Mo. App. 2009).

N. The Commission's interpretation of statutes within its purview are entitled to great weight.[29]

SIBLEY (EMW ONLY)

Findings of Fact:

Sibley Retirement Prudence

10. The Sibley Generating Station (Sibley) was a coal-fired power-generating plant consisting of three units built during the 1960s.[30]

11. Two projects extended the depreciable life for approximately 20 years – to 2040.[31] Those projects consist of a 1991 plant conversion to burn low-sulfur coal, and the installation of scrubbers to Unit 3 in 2009.[32]

12. During the time period of January 2015 through November 2016, Sibley Unit 3 supplied 35% of EMW's energy needs.[33]

13. The depreciation study filed in February 2016 in EMW's rate case, File No. ER-2016-0156, was based on the assets in service as of December 31, 2014 (2014 Depreciation Study). The 2014 Depreciation Study included a projected end of depreciable life date of December 31, 2019, for Sibley Units 1 and 2, and December 31, 2040, for Unit 3 and the Sibley common plant.[34]

14. EMW's 2012 Integrated Resource Plan (IRP) shows the retirement of Sibley Units 1 and 2 occurring in 2017 as part of EMW's Preferred Plan.[35]

[29] *State ex rel. Sprint Mo., Inc. v. Pub. Serv. Comm'n of State*, 165 S.W.3d 160, 164 (Mo. banc 2005) (citing *Foremost–McKesson, Inc. v. Davis*, 488 S.W.2d 193, 197 (Mo. banc 1972)).
[30] Ex. 113, Ives Direct, p. 30.
[31] Ex. 113, Ives Direct, p. 30.
[32] Ex. 114, Kennedy Direct, p. 12.
[33] Ex. 308, Marke Surrebuttal, p. 65.
[34] Ex. 114, Kennedy Direct, pp. 27-28.
[35] Ex. 113, Ives Direct, p. 31.

15. EMW's 2013 and 2014 IRP Annual Updates move the proposed retirement date to 2019.[36]

16. EMW's 2015 IRP shows that Sibley Units 1 and 2 will stop burning coal in 2019.[37]

17. On January 20, 2015, Evergy issued a press release announcing that EMW would stop burning coal at Sibley Units 1 and 2 by December 31, 2019.[38]

18. EMW's 2016 IRP Annual Update restates that Sibley Units 1 and 2 will stop burning coal 2019.[39]

19. EMW's 2017 IRP Annual Update set forth a fuller retirement plan. The retirement of Sibley Units 2 and 3 (including the Unit 1 boiler and common plant) by 2019 reflected the lowest cost plan from a net present value of revenue requirement (NPVRR) perspective. Those retirements on that timeline would result in a savings of $282 million over the 2016 IRP, which would make it the lowest cost alternative on an expected value basis.[40]

20. EMW's modeling for the 2017 IRP Annual Update showed that retiring Sibley Unit 3 reduced costs for EMW customers across all 18 modeled scenarios – regardless of load, gas price, or carbon-dioxide (CO_2) price assumption.[41]

21. The economic evaluation conducted through the IRP process took EMW's projected load growth and specific generation supply portfolio into consideration when the retirement decision was made.[42]

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[36] Ex. 113, Ives Direct, p. 31.
[37] Ex. 113, Ives Direct, p. 31.
[38] Ex. 114, Kennedy Direct, pp. 24-25.
[39] Ex. 113, Ives Direct, p. 31.
[40] Ex. 113, Ives Direct, p. 31.
[41] Ex. 113, Ives Direct, p. 31.
[42] Ex. 56, Messamore Rebuttal, p. 4.

22. EMW determined through the IRP process that the retirement of Sibley would reduce the long-term NPVRR and therefore reduce costs to customers going forward as opposed to continuing to operate the plant. The retirement of Sibley Units 1 and 2 in 2017 were first shown to reduce NPVRR in Evergy's 2012 IRP. The retirement of Sibley Unit 3 in 2018 was first shown to reduce NPVRR in Evergy's 2017 IRP Annual Update.[43]

23. On June 2, 2017, EMW announced by press release it would retire Sibley Units 2 and 3 (including the Unit 1 boiler and common plant) by 2018. The stated factors for the retirement were: the reduction in wholesale electricity market prices; a reduction in the required reserve generating capacity; a decline in near-term capacity needs; the age of the Sibley units; and expected environmental compliance costs.[44]

24. In January 2018, EMW filed a general rate case which included Sibley in rate base as the plant was in operation and expected to be in operation at the true-up date of that rate case, June 30, 2018.[45]

25. EMW's 2018 IRP, filed in April of that year, states that Sibley Units 2 and 3 will retire at the end of 2018.[46]

26. On September 5, 2018, Unit 3 tripped and went off-line due to a turbine vibration event. EMW made a required non-case related filing in the Commission's Electronic Filing and Information System (EFIS) on September 6, 2018, and a follow-up

[43] Ex. 56, Messamore Rebuttal, p. 4.
[44] Ex. 113, Ives Direct, p. 32.
[45] Ex. 113, Ives Direct, p. 32. EMW's filed general rate case is File No. ER-2018-0146.
[46] Ex. 113, Ives Direct, p. 33.

non-case related EFIS filing on September 12, 2018, indicating that a preliminary analysis showed the likely impact of the turbine vibration was a repair costing over $200,000.[47]

27. EMW subsequently conducted a root cause analysis of the Sibley Unit 3 turbine vibration event which included an evaluation of the time and expense to repair the unit. The estimated cost to repair was $2.21 million.[48]

28. EMW estimated that $54 million in capital costs would have been required to keep Sibley operational in the short term, including a submerged flight conveyer, new ash pond, auxiliary boiler, and generator rewind.[49]

29. EMW estimated the operation and maintenance (O&M) costs to keep Sibley operational would have been $28 million per year.[50]

30. The costs to keep Sibley in operation exceeded the benefits. The energy benefits did not always cover total fuel costs. Sibley's average annual SPP margins from 2015 to 2017 were only approximately $4 million. The future capital investment and O&M required to keep the plant operational was forecasted to be $165 million between 2018 and 2021.[51]

31. The EMW Vice President of Generation Operations sent two internal emails regarding the retirement of Sibley on October 2, 2018.[52]

32. The first internal Evergy email of October 2, 2018, states in pertinent part, "It is our intention to cease burning coal and move to decommissioning activities. Upon receipt of this email Robert Hollinsworth will contact Eric Peterson to notify [Southwest

[47] Ex. 113, Ives Direct, p. 33.
[48] Ex. 113, Ives Direct, p. 33.
[49] Ex. 113, Ives Direct, p. 38.
[50] Ex. 113, Ives Direct, p. 38.
[51] Ex. 56, Messamore Rebuttal, pp. 6-7.
[52] Ex. 134 Data Requests and email string from File No. EC-2019-0200, pp. 4-5 of 15.

Power Pool (SPP)] and will contact Randy Adams at Local 412. I will forward this email to the rest of the Evergy officer team."[53]

33. The second internal Evergy email of October 2, 2018, states in pertinent part, "This email is to let the Evergy officer team know the direction being taken following a turbine trip due to vibration on Sibley Unit 3. Following a comprehensive evaluation of options we have determined the safest and most economical solution is to cease burning coal at the station and to move the remaining coal currently on the ground to Iatan."[54]

34. An internal reply to the October 2 email was made on October 3, 2018, by Evergy's chief operating officer (and supervisor to the sender of the October 2 email).[55] That reply states in pertinent part, "We will plan to review such recommendation at the CEO Staff meeting on October 15 in advance of a comparable review with the Evergy Board at the Operations Committee and full Board meeting later this month. Once we've reviewed with the Board, we can then circle back with the management team to review any feedback received and make a final decision."[56]

35. On November 1, 2018, EMW held meetings with Staff and OPC to discuss the turbine vibration event and potential retirement later that month.[57]

36. On November 10, 2018, the sender of the October 2 email writes that he has received feedback from recent management and Board meetings. He states his plan to move forward with a formal retirement of Sibley, and asks that any objections be raised by the end of the business day November 12, 2018.

37. On November 13, 2018, EMW retired Sibley.[58]

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[53] Ex. 134 Data Requests and email string from File No. EC-2019-0200, p. 5 of 15.
[54] Ex. 134 Data Requests and email string from File No. EC-2019-0200, p. 4 of 15.
[55] Tr. Vol. 8, p. 178.
[56] Ex. 134 Data Requests and email string from File No. EC-2019-0200, p. 3 of 15.
[57] Ex. 113, Ives Direct, p. 33.
[58] Ex. 113, Ives Direct, p. 33.

38. The manual titled "Public Utility Depreciation Rates" published by the National Association of Regulatory Utility Commissioners (NARUC) states, "Ordinary retirements are caused by such factors as wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, and changes in demand."[59]

39. EMM retired Montrose Unit 1 in 2016 and Montrose Units 2 and 3, including common plant, on December 31, 2018. These retirements were driven by results of the IRP process and were announced on June 2, 2017 (which updated the prior retirement announcement of January 20, 2015). EMW retired Sibley 1 except for the boiler in June 2017 and the remainder of Sibley 1 and Sibley 2 in 2018 when Unit 3 was retired. All of these retirements were considered in IRP filings before retirement and were demonstrated to result in the lowest NPVRR for Missouri customers.[60]

40. Sibley provided service for 50 to 60 years, representing a major portion of the expected life of the assets. At the time of retirement, the majority of remaining net book value (NBV) was related to the 1991 and 2009 environmental retrofits.[61]

41. NBV is the initial plant in service amount less accumulated depreciation.[62]

42. Increasing the accumulated depreciation reserve reduces NBV and return while decreasing the accumulated depreciation reserve would increase NBV and return.[63]

43. The pace of the developments in renewable technology; a decline in the social acceptance of coal-fired generation; and the onset of federal, state, local and customer carbon-free emission targets changed the economics of Sibley for customers.[64]

[59] Ex. 114, Kennedy Direct, p. 18.
[60] Ex. 114, Kennedy Direct, p. 22.
[61] Ex. 114, Kennedy Direct, p. 23.
[62] Tr. Vol. 8, p. 209.
[63] Tr. Vol. 8, pp. 209-210.
[64] Ex. 114, Kennedy Direct, p. 23.

44. The retirement of Sibley Unit 3 and the Sibley common property in 2018 was the result of a number of factors including, the economics of the plant, the changes in technology providing for the economic development of cleaner generation (for example the introduction of economically feasible solar and wind generation), national environmental requirements, and the changes in the social acceptance of coal fired generation. Evergy states that all of these impacts greatly accelerated in the time between the completion of the 2014 Depreciation Study and late 2018.[65]

45. OPC witness Dr. Marke admitted that the Sibley retirement provided clear environmental and health related benefits.[66]

46. Staff does not dispute the prudence of the decision to retire Sibley.[67]

Sibley AAO

47. Since the Sibley Units 2 and 3 were formally retired after the true-up date in EMW's general rate case, File No. ER-2018-0146, EMW's authorized rates from that rate case would normally include costs, revenues, and investment associated with the Sibley units.[68]

48. The largest component of Sibley's undepreciated investment was the pollution control equipment installed in 2009 to meet clean air requirements,[69]

49. At the time of retirement, Sibley Unit 3 and the Sibley common property were no longer producing energy or expected to produce energy for Evergy. Sibley was no longer used and useful.[70]

[65] Ex. 114, Kennedy Direct, p. 28.
[66] Tr. Vol. 8, p. 267.
[67] Ex. 269, Majors Surrebuttal and True-Up Direct, p. 2.
[68] Ex. 400, Meyer Direct, p. 9.
[69] Ex. 114, Kennedy Direct, p. 27.
[70] Ex. 400, Meyer Direct, p. 10.

50. Generally, the accounting for removal from plant-in-service upon retirement would be to credit the book value of the asset and debit the accumulated reserve.[71]

51. Subsequent to the completion of the 2018 general rate case, and due to the timing of the Sibley retirement, OPC and MECG filed a request for an Accounting Authority Order (AAO) to create a regulatory deferral account for costs and revenues related to Sibley.[72]

52. The Commission granted the AAO request in File No. EC-2019-0200.[73]

53. The Report and Order in the AAO case, states: "The estimated net book value of each Sibley unit and the common assets at Sibley as of June 30, 2018, as calculated by GMO's witness, is $145.7 million. Public Counsel's witness estimated that net book value at $160 million, while MECG's witness estimated that value at $300 million."[74]

54. In the present case, the parties have presented three amounts representing the unrecovered NBV of Missouri jurisdictional Sibley plant using one of three different Commission cases as starting points: [75]

Evergy	$145.2 million at 6/30/2018	EC-2019-0200
Staff	$145.2 million at 6/30/2018	EC-2019-0200
OPC	$190.8 million at 6/30/2018	ER-2016-0156
MECG	$300 million at 6/30/2018	ER-2018-0146

[71] Ex. 218, Majors Direct, p. 13.
[72] File No. EC-2019-0200, Petition for an Accounting Order, filed January 2, 2019.
[73] File No. EC-2019-0200, Report and Order, filed October 17, 2019.
[74] EC-2019-0200, Report and Order, page 9.
[75] Ex. 310, Robinett Rebuttal, pp. 14-17; Ex. 261, Cunigan Surrebuttal, p. 10.

55. Evergy witness Spanos did not file testimony in the 2018 rate case, File No. ER-2018-0146.[76]

56. The approximate $145.2 million Sibley NBV proposed by Evergy in this rate case has not been used to set rates before.[77]

57. Evergy witness Spanos' unit and locational calculations filed in File No. EC-2019-0200 would not have impacted the aggregate balances that were used to set rates in the last rate case even if he had filed testimony.[78]

58. Evergy witness Spanos' testimony in File No. EC-2019-0200 based accumulated depreciation reserve calculations on an expected retirement of November 2018 for all Sibley units.[79]

59. The reallocation of the accumulated depreciation reserves from other EMW steam plants to Sibley by EMW occurred at the time Sibley was being removed from the account balance.[80]

60. The depreciation rate would be affected by increasing or decreasing the accumulated depreciation reserve balance given the same time frame.[81]

61. Parties in the current rate case stipulated to depreciation rates for the remaining EMW steam plants; Iatan, Jeffrey Energy Center and Lake Road identical to the depreciation rates previously authorized by the Commission.[82]

[76] Tr. Vol. 8, p. 337.
[77] Tr. Vol. 8, p. 205.
[78] Tr. Vol. 8, p. 222.
[79] Ex. 133, Spanos Rebuttal, EC-2019-0200, p. 3.
[80] Tr. Vol. 8, p. 253-254.
[81] Tr. Vol. 8, p. 255.
[82] *Order Approving Four Partial Stipulations and Agreements*, issued September 22, 2022; and Ex. 252, Staff Accounting Schedules.

62. The True-Up Accounting Schedules in File No. ER-2018-0146 recorded plant in service and accumulated depreciation reserve at June 30, 2018, with Sibley still in service.[83]

63. Staff and Evergy workpapers are $2 different on plant-in-service (or original cost) and $1 different on accumulated depreciation reserves. Total difference between Staff and Evergy's true-up positions is $3.00.[84]

64. The total Sibley plant-in-service (or original cost) at June 30, 2018 was $478,109,210 with Missouri jurisdictional Sibley plant totaling $476,483,639.[85]

65. Depreciation rates and accumulated depreciation reserves can be calculated many ways. The remaining life technique uses the net plant of surviving plant less book depreciation reserve as the depreciable cost and uses the average remaining service life of the assets. The whole life technique is where the depreciation cost is only the original cost spread out evenly over the average service life of the assets.[86]

66. The 2014 Depreciation Study included Sibley life extensions to 2040.[87]

67. Evergy's calculations resulted in the book reserve (accumulated depreciation) associated with Sibley as of June 30, 2018, as approximately $327.2 million which produced a NBV of approximately $145.7 million.[88]

68. Evergy witness Spanos' assignment of the actual book reserve to the location level in his File No. EC-2019-0200 depreciation analysis is based on the recovery and age of those assets. The only way to calculate book reserve when shifting from the

[83] Ex. 310, Robinett Rebuttal, p. 15 and Schedule JAR-R-3.
[84] Ex. 310, Robinett Rebuttal, p. 16.
[85] Ex.402, Meyer Surrebuttal, Schedule GRM-1, p. 1.
[86] Ex. 209, Cunigan Direct, pp. 4-5.
[87] Tr. Vol. 8, pp. 133-134.
[88] Ex. 72, Spanos Rebuttal, pp. 21-22.

location level to the vintage level is based on theoretically assigning the book reserve to the vintage level based on the age of the dollars (asset).[89]

69. A theoretical reserve calculation is a snapshot in time that does not trace any collection of depreciation expense on any asset. The calculation assumes that all the prior depreciation expense was adequate, but it does not look at what was actually collected in rates.[90]

70. Evergy witness Spanos agreed that a theoretical reserve calculation should not be the basis of calculating depreciation reserve; however, it should be a basis of how to assign the depreciation reserve to the vintage level based on the ages of the asset.[91]

71. Staff first recommended a remaining NBV of $145.6 million, but subsequently recommended $300 million if no additional evidence supportive of the $145.6 million was presented.[92]

72. Staff witness Majors testified that although Mr. Spanos briefly explains the theoretical reserve method of calculating this amount ($145.6 million), there is no clear reasoning why this method is superior to the allocated reserve amount included in the 2018 rate case.[93]

73. Staff witness Majors did a high-level analysis of Sibley plant and accumulated depreciation reserve going back to 2004 (File No. ER-2004-0034) calculating an approximate NBV of $234 million using approved depreciation rates and

[89] Tr. Vol. 8, p. 325.
[90] Tr. Vol. 8, pp. 314-315.
[91] Tr. Vol. 8, p. 325.
[92] Ex. 254, Majors Rebuttal, p. 4.
[93] Ex. 254, Majors Rebuttal, p. 5.

Staff accounting schedules plant in service amounts. His analysis ended at the 2018 rate case.[94]

74. Staff witness Majors was unable to independently calculate the approximate $145 million NBV proposed by EMW.[95]

75. The $145.7 million Sibley units net book value put forth by Evergy through Mr. Spanos calculation was determined outside of the 2018 rate case and was never contemplated when setting Evergy's rates.[96]

76. OPC witness Robinett calculated the NBV of Sibley based on the 2014 Depreciation Study to be approximately $190.8 million at June 30, 2018.[97] Under the 2014 Depreciation Study, the unrecovered balance of Sibley was approximately $227.1 million at December 31, 2014. Reducing that number by 3.5 years of depreciation expense (approximately $36.2 million) results in an NBV of $190.8 million at June 30, 2018.[98]

77. OPC witness Robinette has been analyzing depreciation rates and studies of utilities in Missouri and providing expert testimony on behalf of Staff (2010-2016) and OPC (2016 to current) since 2010.[99]

78. The 2014 Depreciation Study was the last time a depreciation study was performed that included Sibley prior to the Sibley retirement in late 2018.[100]

79. The Commission previously ordered the adoption of the life span method dating back to File Nos. ER-2010-0355 and ER-2010-0356. Under the life span method, the generating units should not be looked at as a fleet but as individual units with individual

[94] Tr. Vol. 8, p. 216.
[95] Tr. Vol. 8, p. 216.
[96] Ex. 402, Meyer Surrebuttal, p. 7.
[97] Ex. 310, Robinett Rebuttal, p. 16.
[98] Ex. 310, Robinett Rebuttal, p. 18.
[99] Ex. 309, Robinett Direct, Schedule JAR-D-1.
[100] Ex. 310, Robinett Rebuttal, pp. 14-15.

lives, not as (or similar to) a mass asset. However, EMW continues to apply a mass asset depreciation methodology for book purposes. Because of this depreciation treatment both EMW's and Staff's depreciation analyses in this case have led to a reduction of the accumulated depreciation reserve directly tied to the Sibley property retirement.[101]

80. Evergy has decreased the accumulated depreciation reserve balances for the Jeffrey Energy Center, Iatan 1 and 2, and Lake Road steam generating units to account for a portion of the undepreciated balance from the Sibley unit retirements.[102]

81. The Commission has set depreciation rates on the principle that only known and measurable costs should be included in rates. The historical interim net salvage experienced has been included into the depreciation rates that have previously been ordered by this Commission and are in the depreciation rates currently being recommended by Staff. Only costs that are known and measurable should be included in depreciation expense.[103]

82. Evergy maintains depreciation reserve by account and by type of plant (*i.e.* steam production, nuclear production, other production, transmission, distribution, and general plant) not by generating unit. Mr. Spanos performed an allocation of depreciation reserves from a pool of all dollars for steam generation in the complaint case to arrive at his net book value of $145.7 million. Mr. Spanos assigned reserves to each of the steam generating units for the first time in the complaint case.[104]

83. Evergy witness Spanos' work papers provided in the complaint case, File No. EC-2019-0200, identify through the five major steam production plant accounts,

[101] Ex. 311, Robinett Surrebuttal, pp. 7-8.
[102] Ex. 400, Meyer Direct, p. 14.
[103] Ex. 311, Robinett Surrebuttal, pp. 8-9.
[104] Ex. 311, Robinett Surrebuttal, p. 10.

approximately $599 million of theoretical reserve. The difference in amounts between the accumulated depreciation reserve collected in rates through June 30, 2018, and the theoretical reserve, approximately $175 million, would not have been collected from customers through rates.[105]

84. Staff agrees that the O&M deferral in the AAO is approximately $39 million.[106]

85. MECG agrees that the O&M deferral in the AAO is approximately $39 million.[107]

86. The O&M deferral was updated from Evergy's direct filing to $39,020,260 based on new information from EMW.[108]

87. The return deferral should be based on the NBV calculated at June 30, 2018.[109]

88. The average filed rate of return recommendation in File Nos. ER-2018-0145 and ER-2018-0146 (EMM and EMW's most recent general rate cases, respectively) was 8.73%.[110]

89. OPC witness Robinett calculates that the return collected since Evergy's last rate case is approximately $66.6 million. This calculation relies on an NBV of Sibley based on the 2014 Depreciation Study of approximately $190.8 million at June 30, 2018, and the average filed rate of return recommendation from Evergy's 2018 rate cases of 8.73% multiplied by four years.[111]

[105] Tr. Vol. 8, p. 322.
[106] Tr. Vol. 8, p. 196.
[107] Tr. Vol. 8, p. 197.
[108] Tr. Vol. 8, p. 196.
[109] Tr. Vol. 8, p. 196.
[110] Ex. 310, Robinett Rebuttal, p. 18.
[111] Ex. 310, Robinett Rebuttal, p. 18.

90. MECG witness Meyer calculated the return to be approximately $102.9 million based on an 8.576 percent rate of return derived from a 9.5 percent return on equity, and a $300 million NBV over four years.[112]

91. EMW elected PISA accounting on December 31, 2018.[113]

92. EMW witness Kennedy forecasted the Sibley AAO costs through November 30, 2022. EMW's return component was calculated with a rate of return of 9.87 percent. The rate base component includes a deduction for Accumulated Deferred Income Taxes (ADIT), Excess Deferred Income Taxes (EDIT), and Net Operating Losses (NOLs) and additions for materials and supplies, and fuel inventory. The subtotal rate base was calculated to be $125,483,489. When the subtotal rate base is multiplied by the 9.87 percent rate of return and calculated out to November 30, 2022, the return component totals $49,540,308.[114]

93. If the net book value of Sibley is calculated using the methods proposed by Mr. Greg Meyer or Mr. John Robinett, then the remaining steam production plant accounts would need to be rebalanced using the same method.[115]

94. The signatories to the *Stipulation and Agreement* in File No. ER-2018-0146 agreed to defer as a regulatory liability the amounts of depreciation expense included in the cost of service for the Sibley plant from the date of retirement until new customer rates are established in the current rate case. These deferrals reduce the NBV of Sibley by

[112] Ex. 400, Meyer Direct, p. 11.
[113] Ex. 308, Marke Surrebuttal, p. 42.
[114] Ex. 114, Kennedy Direct, p. 35.
[115] Ex. 261, Cunigan Surrebuttal, p. 9.

increasing the depreciation reserve. The Missouri jurisdictional balance of this deferral will be $41.4 million through November 2022.[116]

95. Evergy requests authority for recovery of and to earn a return on the incurred costs of the final decommissioning of Sibley.[117] Evergy argues the net salvage value is part of the service value of the asset, thus the decommissioning costs should be charged to the accumulated depreciation account.[118]

96. The amount of labor and non-labor O&M in the Sibley AAO is $39,020,260, as of November 30, 2022.[119]

97. The total Sibley depreciation deferred was calculated by EMW to be $41,448,308, as of November 30, 2022.[120]

Amortization Period

98. Staff witness Keith Majors supports netting the regulatory liability against the unrecovered investment in the Sibley Units and amortizing the balance over five years.[121]

99. MECG's witness, Greg Meyer, recommended a 10-year amortization period for the regulatory liability and a 20-year amortization period with no return on the unamortized balance for the unrecovered investment in the Sibley Units.[122]

100. The funds in the regulatory liability account were collected from customers over approximately four years.[123]

[116] Ex. 254, Majors Rebuttal, p. 9.
[117] Ex. 114, Kennedy Direct, p. 7, and 32.
[118] Ex. 114, Kennedy Direct, p. 33.
[119] Ex. 46, Klote Surrebuttal, p. 9
[120] Ex. 114, Kennedy Direct, p. 35.
[121] Ex. 218, Majors Direct, p.141.
[122] Ex. 400, Meyer Direct, pp. 14-15.
[123] Ex. 129, Kennedy Rebuttal, p. 13.

101. If the Commission authorizes recovery of any unrecovered investment in the Sibley Units, OPC witness Dr. Marke recommended that the amortization period match to the 2040 scheduled retirement date of Sibley Unit 3, which is seventeen years from when rates will go into effect in this case.[124]

102. A utility's authorized ROE is to allow the utility an opportunity to earn just and reasonable compensation for their investment in rate base.[125]

103. Evergy witness Ives testified that Commission decisions on the issues in these cases could result in a revenue requirement that exceeded the Compound Annual Growth Rate cap (PISA cap) and a performance penalty under Section 393.1655.3, RSMo, (Supp. 2021).[126]

Conclusions of Law:

O. In determining whether a utility's conduct was prudent, the Commission will judge that conduct by:

> asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, [the Commission's] responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[127]

P. The Missouri Supreme Court further affirmed the Commission's rationale in stating,

> [t]he PSC ordinarily applies a presumption of prudence in determining whether a utility reasonably incurred its expenses. This presumption of prudence will not survive a showing of inefficiency or improvidence that creates serious doubt as to the prudence of an expenditure. If such a showing is made, the presumption drops out and the applicant has the

[124] Ex. 306 - EMW, Marke Direct, p. 10
[125] Ex. 223, Won Direct, p. 7.
[126] Ex. 42, Ives Surrebuttal, pp. 19-23.
[127] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n,* 954 S.W.2d 520, 529 (Mo. App. W.D. 1997).

> burden of dispelling these doubts and proving the questioned expenditure to have been prudent.[128]

Q. In order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that the utility acted imprudently and that such imprudence resulted in harm to the utility's ratepayers.[129]

R. Commission Rule 20 CSR 4240-22.010 states:

> The fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies.

S. Resource planning is defined as the process by which an electric utility evaluates and chooses the appropriate mix and schedule of supply-side, demand-side, and distribution and transmission resource additions and retirements to provide the public with an adequate level, quality, and variety of end-use energy services.[130]

T. Resource plan means a particular combination of demand-side and supply-side resources to be acquired according to a specified schedule over the planning horizon, which is at least 20 years' duration.[131]

U. Resource acquisition strategy means a preferred resource plan, an implementation plan, a set of contingency resource plans, and the events or circumstances that would result in the utility moving to each contingency resource plan.

[128] *Spire Missouri, Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 232 (Mo. banc 2021) (internal citations and quotation marks omitted).
[129] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n,* 954 S.W.2d 520, 530 (Mo. App. W.D. 1997).
[130] 20 CSR 4240-22.020(53).
[131] 20 CSR 4240-22.020(43 and 52).

It includes the type, estimated size, and timing of resources that the utility plans to achieve in its preferred resource plan.[132]

V. A preferred resource plan is the resource plan contained in the resource acquisition strategy most recently adopted by the utility.[133]

W. *Depreciation,* as applied to depreciable electric plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of electric plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities.[134]

X. *Retirement units* means those items of electric plant which, when retired, with or without replacement, are accounted for by crediting the book cost thereof to the electric plant account in which included.[135]

Y. 12. *Records for Each Plant (Major Utility).*

> Separate records shall be maintained by electric plant accounts of the book cost of each plant owned, including additions by the utility to plant leased from others, and of the cost of operating and maintaining each plant owned or operated. The term *plant* as here used means each generating station and each transmission line or appropriate group of transmission lines.[136]

[132] 20 CSR 4240-22.020(51).
[133] 20 CSR 4240-22.020(46).
[134] CFR 18, Part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,* Definitions.
[135] CFR 18, Part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,* Definitions.
[136] CFR 18, Part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,* General Instructions.

Z. 22. *Depreciation Accounting.*

A. *Method.* Utilities must use a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property over the service life of the property.

B. *Service lives.* Estimated useful service lives of depreciable property must be supported by engineering, economic, or other depreciation studies.

C. *Rate.* Utilities must use percentage rates of depreciation that are based on a method of depreciation that allocates in a systematic and rational manner the service value of depreciable property to the service life of the property. Where composite depreciation rates are used, they should be based on the weighted average estimated useful service lives of the depreciable property comprising the composite group.[137]

AA. 10. *Additions and Retirements of Electric Plant.*

A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of electric plant, all property will be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall maintain a written property units listing for use in accounting for additions and retirements of electric plant and apply the listing consistently.

B. The addition and retirement of retirement units shall be accounted for as follows:

(1) When a retirement unit is added to electric plant, the cost thereof shall be added to the appropriate electric plant account, except that when units are acquired in the acquisition of any electric plant constituting an operating system, they shall be accounted for as provided in electric plant instruction 5.

(2) When a retirement unit is retired from electric plant, with or without replacement, the book cost thereof shall be credited to the electric plant account in which it is included, determined in the manner set forth in paragraph D, below. If the retirement unit is of a depreciable class, the book cost of the unit retired and credited to electric plant shall be charged to the accumulated provision for depreciation applicable to such property. The cost of removal and

[137] CFR 18, Part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,* General Instructions.

the salvage shall be charged or credited, as appropriate, to such depreciation account.[138]

BB. 403 *Depreciation expense*.

A. This account shall include the amount of depreciation expense for all classes of depreciable electric plant in service except such depreciation expense as is chargeable to clearing accounts or to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.[139]

CC. Section 393.1655, RSMo (Supp. 2021) states, in pertinent part:

1. This section applies to an electrical corporation that has elected to exercise any option under section 393.1400 and that has more than two hundred thousand Missouri retail customers in 2018, and shall continue to apply to such electrical corporation until December 31, 2023.

* * *

3. This subsection shall apply to electrical corporations that have a general rate proceeding pending before the commission as of the later of February 1, 2018, or August 28, 2018. If the difference between (a) the electrical corporation's average overall rate at any point in time while this section applies to the electrical corporation, and (b) the electrical corporation's average overall rate as of the date new base rates are set in the electrical corporation's most recent general rate proceeding concluded prior to the date the electrical corporation gave notice under section 393.1400, reflects a compound annual growth rate of more than three percent, the electrical corporation shall not recover any amount in excess of such three percent as a performance penalty.

Issues Presented by the Parties:

A. Was the retirement of the Sibley generating facility before the end of its useful life prudent?

1. If no, what if any disallowance should the Commission order?

B. What is the appropriate value for the regulatory liability from Case No. EC-2019-0200?

[138] CFR 18, Part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,* Electric Plant Instructions.
[139] CFR 18, Part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,* Income Accounts.

C. What is the amount of unrecovered investment associated with the Sibley Unit Retirements?

D. What reserve balances should be used for purposes of determining depreciation expense for EMW steam production units, consistent with the Commission's determination of Sibley's unrecovered investment?

E. What is the proper amortization period for the regulatory liability related to Sibley?

F. What is the proper amortization period for the unrecovered depreciation investment from the Sibley retirement?

G. Should the net book value be included in rate base?

H. Should the Regulatory liability for Sibley include a rate of return on the undepreciated balance from the time of retirement through the rates effective in this rate case?

I. Should the unrecovered investment in Sibley earn a weighted average cost of capital return on a going forward basis?

Decision:

Sibley Retirement Prudence

The proffered evidence purportedly showing Evergy "gamed" the system are two emails, the timing of the retirement during a rate case, and the amount of undepreciated life remaining.

Both emails of October 2 refer to being sent to the Evergy officer team. This clearly indicates a higher level of approval was necessary. The mention of contacting the SPP and the local labor union can be interpreted as either giving them a heads-up or as official notice of retirement – neither view is conclusive based on the evidence. And, only inference was offered in opposition to the idea that the October 3 email outlined a more formal retirement decision-making process. The Commission does not find the emails to be persuasive evidence that the retirement occurred on or around October 2, 2018, or that Evergy was attempting to game the system.

The planned retirement of Sibley was December 2018. The actual retirement occurred November 13, 2018, but began with the turbine vibration event of September 5, 2018. The true-up date of June 30, 2018, was the cut-off to include assets in rate base during the previous rate case, File No. ER-2018-0146. Generally, all assets used and useful as of that date were included in rate base. The turbine vibration event occurred after the applicable true-up date. EMW got estimates to fix Sibley and subsequently the repair versus retirement decision was reviewed by upper management. EMW also announced the likely retirement of Sibley Unit 3 in its 2017 IRP Annual Update. The Commission finds no persuasive evidence that EMW acted to game the system by purportedly delaying its decision to retire Sibley.

At the time of retirement, Sibley Unit 3 had a depreciation retirement date of 2040. The majority of the undepreciated investment at issue is due to the environmental upgrades occurring in 2009. However, the prudence of those investments is not at issue. Rather, the question is if the retirement of those investments with approximately 20 years of remaining depreciable life was prudent?

Sibley's retirement was the catalyst for OPC and MECG's request for an AAO in File No. EC-2019-0200. In that case, the prudence of the retirement decision was deferred until this rate case. OPC is the only party challenging the prudence of the decision to retire Sibley. OPC questions the prudency of retiring a dispatchable generating unit that was, in one recent time period, contributing approximately one third of EMW's total generation load. OPC argues this transferred too much risk to ratepayers as EMW, without Sibley, has to purchase power in order to meet customer load, which will result in higher customer rates. The Commission does not find OPC's arguments persuasive.

It is undeniable that there is financial risk in predicting power generation and some of that risk will be borne by ratepayers which can reasonably be counted as a detriment. However, in making a decision whether to close Sibley there were also significant definitive detriments to be considered, namely the cost to repair and keep Sibley operational. The estimated cost to repair Sibley Unit 3 was $2.21 million and an estimated capital investment of $54 million would have been needed to keep Sibley operational. Additionally, the $28 million in annual operations and maintenance costs to keep a 60-year-old coal-fired generation plant running had to be considered.

Even without factoring in the cost of repairing Sibley Unit 3, the information and analysis presented in Evergy's 2017 IRP plan showed that the lowest cost from a net present value of revenue requirement perspective was to retire Sibley by end of 2019. Further, even OPC acknowledged there are additional unquantifiable environmental and health benefits to reducing coal fired generation. The Commission does not find the decision to retire Sibley to be imprudent.

Sibley AAO

Regulatory Liability Account

The Commission authorized the deferral of Sibley related costs in File No. EC-2019-0200. The Commission now must decide the amount of regulatory liability resulting from the Sibley deferrals it will allow to flow back to customers.

The deferrals quantify the Sibley related costs that were included in rates from File No. ER-2018-0146 effective December 6, 2018, through the date rates will become effective in this rate case. The parties to the current case agree that the deferral of Sibley labor and non-labor O&M costs to be included in the regulatory liability is $39,020,260.

Establishing the NBV of the Sibley properties at June 30, 2018, is required for the determination of the return paid by customers in rates. There is generally no dispute as to the original in-service cost of the Sibley plant (total Sibley plant-$478,109,210, Missouri jurisdictional-$476,483,639). The original cost of plant in service less the applicable depreciation expense accumulated over time in the accumulated depreciation reserve equals the NBV. The NBV also represents the unrecovered depreciation expense. It is the quantification of the accumulated depreciation reserve balance that creates the NBV difference between the parties. Determining that figure is key to answering many of the other issues presented.

Parties often use the total Sibley original in-service cost, accumulated depreciation reserve amount and NBV, however for purposes of this rate case these amounts will ultimately need to be converted to Missouri jurisdictional exact dollar amounts. The use of approximate amounts and rounding was also used frequently in testimony and during the hearing.

OPC witness Robinett's calculation of the Sibley NBV at June 30, 2018, is the only approach that included the allocation of accumulated depreciation reserve balance between EMW's steam properties as determined by Spanos' 2014 Depreciation Study, which was the most recent depreciation study at the time of the 2018 rate case. The 2019 theoretical reserve analysis performed by Mr. Spanos addresses the Sibley retirement by allocating reserve dollars previously allocated to other EMW steam properties to Sibley, thus reducing Sibley's June 30, 2018, NBV and increasing the NBV of the other steam properties. Once Sibley was retired on November 13, 2018, it was no longer eligible to be included in rate base. Using the 2014 Depreciation Study as a basis to estimate the remaining unrecovered NBV gives consideration to reserve allocation changes prior to

Sibley's retirement. OPC witness Robinett's experience in the analysis of depreciation rates and studies allowed him to determine a NBV at June 30, 2018, by using the 2014 Depreciation Study allocations and applying 3 ½ years of depreciation expense to bring the unrecovered Sibley value in line with plant and reserve in File No. ER-2018-0146. The Commission finds OPC witness Robinett's calculation to be the most credible of the NBV estimates.

MECG argues that the NBV was last established in the 2018 case, File No. ER-2018-0146, and that valuation should remain at $300 million at June 30, 2018, as it represents the amount used to calculate rates. MECG's NBV position does not consider the 2014 Depreciation Study accumulated depreciation reserve allocations. While the overall return on net rate base was charged to customers through rates set in the 2018 case, no specific amount was assigned to any individual plant. The 2014 Depreciation Study provides a more precise allocation of the accumulated depreciation reserve between EMW's steam properties of which the amounts allocated to Sibley are to be included in determining the return on Sibley's NBV.

Evergy's depreciation expert argues for a NBV of $145.7 million. However, Evergy's NBV proposal starts with the amount calculated in File No. EC-2019-0200, which is based on the new-in-2018 individual retirement values that were derived using a theoretical reserve. Typically, a theoretical reserve is not used when other information is available.

The Commission is not convinced that once Sibley was retired on November 13, 2018, it was appropriate for EMW to shift Sibley's unrecovered depreciation to other steam properties. The effect of the reallocation proposed by EMW is to allow future return on Sibley stranded costs that resulted from the early retirement of

the properties to be included in future customer rates. The Commission finds the appropriate NBV at June 30, 2018, for the Sibley Units is $190,833,490.

Next, the appropriate rate of return to use in calculating the return portion of the regulatory liability must be determined. OPC proposes using 8.73 percent which is the average of the rate of return proposed by parties in EMW's last rate case. MECG proposes a 8.576 percent rate of return by using a 9.5 percent return on equity which is based on the PISA statute default rate of return that would not have been applicable in EMW's 2018 rate case since that treatment was not requested by EMW until after the effective date of rates in that rate case. EMW's proposed rate of return is 9.87 percent but they provide no support or explanation of how this seemingly high percentage was derived.

The Commission will calculate the return portion of the regulatory liability based on OPC's June 30, 2018, Sibley NBV of $190,833,490 multiplied by an 8.73 percent rate of return over the period rate payers have been paying the current rates, December 6, 2018, through November 30, 2022.

The regulatory liability represents costs paid by customers since the 2018 rate case for Sibley related costs that ended upon its retirement in November 2018 that are now being credited to customers. The regulatory liability includes $39,020,260 of labor and non-labor O&M costs and a return of $66,639,055 for a total of $105,659,315.

The Stipulation and Agreement in the 2018 rate case provided for specific treatment of depreciation expense collected after Sibley's retirement. The depreciation amounts would accumulate in a regulatory liability until new customer rates were established in a subsequent rate case. The regulatory liability account would then be closed into accumulated depreciation. This treatment eliminates the need to have the

depreciation expense that was included in rates included in and amortized with the other components of the regulatory liability. This increases the accumulated depreciation reserve and reduces the Sibley NBV at November 30, 2022.

Regulatory Asset

The NBV of the Sibley properties at November 30, 2022, represents the unrecovered depreciation expense or EMW's unrecovered investment. Since the Commission has found the appropriate NBV for the Sibley properties at June 30, 2018, to be $190,833,490, the NBV at November 30, 2022, can be determined by reducing the June 30, 2018, NBV by the depreciation expense closed to the accumulated depreciation reserve through November 30, 2022 (53 months of depreciation expense). This includes the recognition of depreciation expense of Sibley between June 30, 2018, and the retirement date, November 13, 2018, and the deferral provision of the. Stipulation and Agreement in the 2018 rate case. The NBV at November 30, 2022, is $145,067,295.

The Commission will also allow EMW to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of the Sibley properties that were not reflected in the June 30, 2018, plant in-service balances. These costs are $37,186,380. Including the return of these costs in EMW's NBV supports the Commission's practice of not allowing terminal net salvage values in depreciation rates. Therefore, the total regulatory asset is $182,253,675.

Even though Sibley retired in November 2018, the accumulated depreciation reserve increased from July 1, 2018, and must be included in determining the NBV to be used for amortization of the return of the remaining Sibley investment. The regulatory asset being established in this case allows EMW to recover its undepreciated investment in Sibley that resulted from its early retirement.

Evergy also requests a return on the undepreciated amount of Sibley plant, acknowledging that it is no longer used and useful, and cites an academic treatise in support. Evergy also argues it should earn a return on and return of the NBV of Sibley as there is no authoritative reason not to permit it. Staff, MECG, and OPC argue against any authorized return on the undepreciated amount of Sibley.

Historically, the Commission has distinguished between recovery based on prudent investment and recovery based on the asset being used and useful. The Commission is not persuaded by Evergy's argument and sees no reason to change its prior decisions. While it is appropriate to allow a utility to recover amounts prudently invested in plant, allow it a return of amounts spent, the fact that an initial investment may have been prudent when made does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful. The Commission will allow recovery of the undepreciated amount of Sibley plant as the prudency of the investment in Sibley, including the 1991 and 2009 environmental retrofits, is unchallenged. The Commission will not authorize a return on that amount as none of that investment is now used and useful. Since the Commission is not allowing a return on the undepreciated amount of Sibley plant the issue on whether to use a weighted average cost of capital return on a going forward basis is moot.

The Commission's denial of Evergy's request for a return on the undepreciated amount of Sibley plant coincides with its decision that the Sibley NBV should not continue to be included in rate base. This is not based on a judgement of imprudence but a determination that as retired plant Sibley should be removed from Evergy's books. Only the regulatory liability and asset associated with Sibley should be reflected in Evergy's rates going forward.

To avoid having the theoretical reserve developed in File No. EC-2019-0200 applied in the allocation of the accumulated depreciation reserve between EMW's steam properties, the Commission will instruct Staff to work with EMW and OPC to have the EMW steam properties accumulated depreciation reserve amounts going forward from this case correspond to the 2014 Depreciation Study analysis that led to OPC's formulation of its $190,833,490 NBV at June 30, 2018. The accumulated depreciation reserve balances for other EMW property besides the steam properties will not be affected since the reserve issue in this case applied only in the determination of the 2018 retired Sibley NBV which also then impacted the accumulated depreciation reserve of the other steam properties.

Amortization period

One Amortization or Two

The Commission does not agree with Staff that the unrecovered investment in the Sibley Units should be reduced by the regulatory liability and the balance addressed in a single amortization. It is more appropriate and transparent to keep the two accounts distinct and amortize them separately. The regulatory liability represents Sibley costs included in rates after its retirement in November 2018 that were paid by customers. The regulatory asset represents the undepreciated Sibley plant investment or NBV that the Commission will allow EMW to recover from customers.

Regulatory Liability Amortization

Next the Commission must determine the amortization period over which the regulatory liability should be returned to customers. The regulatory liability was collected from rate payers over approximately four years. MECG and Staff both support an amortization period greater than four years. MECG argued the size of the regulatory

liability warrants a longer period. The Commission does not see any justification to delay rate payer recovery – that is for rate payers to recover over a longer time frame than the four years in which the amount of the regulatory liability was collected from customers. Accordingly, the Commission finds the proper amortization period over which the revenue liability should be credited to customers is the same period over which it was collected from customers, four years.

Regulatory Asset Amortization

Next, we must determine the appropriate amortization period for the regulatory asset. The length of an amortization is typically driven by how large an amount is being amortized, because of its impact on rates, and/or it may be tied to another factor, such as the regulatory liability amortization in this case being set at four years to mirror the period over which those amounts were included in rates. Evergy, OPC and MECG all propose that the amortization period for recovery of the unrecovered investment in the Sibley Units be based upon the projected remaining life of the plant had it not been closed. While the timeframes they recommend vary only based upon their estimates of that remaining useful life, their proposals are vastly different. Evergy seeks recovery over a 20-year amortization period with the assumption it will be earning a return on the unamortized balance over that time frame. OPC and MECG would have recovery over a 17- or 20-year period, without allowing a return on the unamortized balance.

As previously addressed it is not appropriate to allow Evergy to continue to earn a return on plant that is no longer in service, no longer used and useful. So, the question before the Commission is whether it is appropriate to make Evergy wait 17 to 20 years for a full return of its unrecovered investment absent any return on those amounts. The Commission does not find this result reasonable. Evergy should be allowed a return of

these amounts as quickly as practicable. The only other party taking a position on this issue was Staff, who recommended first netting the asset and liability accounts before amortizing the resulting unrecovered asset balance over a five-year period. The Commission has determined it is more appropriate and transparent to treat the regulatory liability and asset accounts independently, and has determined that the regulatory liability should be recovered over a four-year period.

The regulatory asset is not so large as to necessitate use of an extended 17- to 20-year amortization period, but it is almost double the amount of the regulatory liability, which is to be recovered over a four-year period. The Commission finds it appropriate to set the amortization period for the unrecovered investment in the Sibley Units at eight years.

Further, the Commission is mindful that Evergy elected PISA accounting in 2018, and although the PISA deferral issue was made moot by the Commission's decision in File No. ER-2023-0011, Evergy's concern that the revenue requirement authorized in this case might push it over its PISA cap warrants consideration. While there is no clear evidence as to whether a shorter recovery period would push Evergy over its PISA cap, extending the recovery of the regulatory asset over a period greater than the regulatory liability recovery period will decrease the risk of Evergy surpassing the PISA cap.

AMI-SD

Findings of Fact:

104. Automated Meter Infrastructure (AMI) is an integrated system of smart meters, communication networks, and data management systems that enables two-way communication between utilities and customers.[140]

[140] Ex. 211, Eubanks Direct, p. 3.

105. AMI meters measure and record electricity usage hourly or sub-hourly. Depending on the manufacturer and model of the AMI meter, other capabilities may be available such as monitoring the on/off status of electric service, measuring voltage, and remotely disconnecting and reconnecting electric service.[141]

106. EMM and EMW initially began replacing their existing automated meter reading (AMR)[142] meters with AMI meters in portions of its service territories from 2014 to 2016.[143]

107. Evergy historically has installed AMI meters that have different capabilities.[144]

108. Evergy first began installing AMI meters with remote service disconnect and reconnect, commonly referred to as AMI-SD meters, in 2017.[145]

109. As of September of 2018, EMM's AMI meter penetration was approximately 98% and EMW's was somewhat less than 60%.[146]

110. From November 1, 2018, through May 31, 2022, 87% of the meters exchanged were less than 7 years old.[147]

111. During the test year and update period (through December 2021), EMM exchanged 49,647 meters and EMW exchanged 22,235 meters. Of the exchanged meters, 99% of meters exchanged were less than 7 years old.[148]

[141] Ex. 211, Eubanks Direct, p. 3.
[142] AMR meters allow reading from a handheld device or vehicle, within a certain distance from the meter. To contrast, AMI meters can be read from anywhere there is an internet connection.
[143] Ex. 211, Eubanks Direct, p. 3.
[144] The specifics regarding the manufacturer and model type is confidential and is not at issue except for those meters with the service disconnect and reconnect functionality.
[145] Ex. 21, Caisley Rebuttal, p. 11.
[146] Ex. 211, Eubanks Direct, p.4.
[147] Ex. 262, Eubanks Surrebuttal and True-up Direct, p. 5.
[148] Ex. 211, Eubanks Direct, p. 5.

112. Some of the AMI-SD meters installed during 2019 and 2020 were replacing manual meters as part of the rural EMM AMI meter exchange.[149]

113. Staff raised a concern regarding Evergy's premature retirements of the AMI meters still having a significant portion of remaining life being removed and replaced with AMI-SD meters.[150]

114. At the time of the initial deployment of AMI, AMI-SD meters were cost prohibitive, more than double the cost of the meters that were installed and nearly 25% higher than prices available today for AMI-SD meters.[151]

115. The AMI meters installed in 2014 to 2016 had a design life of 20+ years.[152] Evergy testified that the AMI meters installed in 2014-2016 still had design life left.[153]

116. Based on Account 370.02 Meters - AMI Distribution in the 2018 true-up accounting schedules through June 30, 2018, EMM had a Missouri Jurisdictional plant-in-service of $33,812,886 with an accumulated reserve of $4,081,223. This compares to a plant-in-service of $61,650,283 with an accumulated depreciation reserve of $3,211,002 based on Staff's direct accounting schedules through May 31, 2022.[154]

117. Based on Account 370.02 Meters - AMI Distribution in the 2018 true-up accounting schedules through June 30, 2018, EMW had a Missouri Jurisdictional plant-in-service of $21,777,871 with an accumulated reserve of $1,230,040. This compares to a plant-in-service of $49,178,779 with an accumulated depreciation reserve of $2,472,035 based on Staff's direct accounting schedules through May 31, 2022.[155]

[149] Ex. 306 - EMW, Marke Direct, p. 15 (see table); Ex. 306 – EMM, Marke Direct, p. 9 (see table).
[150] Ex. 211, Eubanks Direct, p. 7.
[151] Ex. 21, Caisley Rebuttal, p. 10.
[152] Ex. 211, Eubanks Direct, p. 5.
[153] Ex. 21, Caisley Rebuttal, p. 9.
[154] Ex. 310, Robinett Rebuttal, p. 6.
[155] Ex. 310, Robinett Rebuttal, p. 7.

118. OPC's witness Robinett indicated that the changes in plant in service and accumulated depreciation mean that the amount of early retirements has outpaced annual depreciation expense accrual which can be seen by a reduction in the total accumulated depreciation reserves from 2018 to 2022. This is not typical with an increase in plant-in-service over the same period. It would have been expected that depreciation reserve would have continued to increase and should have increased more with the additional plant that was added.[156]

119. Evergy has not recorded the AMI meters on the books as 'old' or 'new' nor do they intend to open up a new subaccount for the new meters.[157]

120. Evergy intends to complete the replacement of AMI meters with AMI-SD meters by the end of 2024,[158] and possibly as early as the end of 2023.[159]

121. Evergy states the AMI meters were replaced with AMI-SD meters for technology reasons.[160]

122. The current AMI meters are not being replaced because they are at the end of their useful life but instead to make it easier for customer to be disconnected.[161]

123. AMI-SD reconnect functionality allows customers to get service connected within minutes, nearly 24 hours a day, seven days a week.[162]

124. To be reconnected currently, it can take one to three days, depending on the timing of the request being after hours or including non-business days.[163]

[156] Ex. 310, Robinett Rebuttal p. 6.
[157] Ex. 306 - EMW, Marke Direct, p. 20; Ex. 306 – EMM, Marke Direct, p. 14.
[158] Ex. 211, Eubanks Direct, p. 7.
[159] Tr. Vol. 9, p. 381.
[160] Ex. 21, Caisley Rebuttal, p. 10.
[161] Ex. 306 - EMW, Marke Direct, p. 22; Ex. 306 – EMM, Marke Direct, p. 16.
[162] Ex. 21, Caisley Rebuttal, pp. 11-12.
[163] Tr. Vol. 9, p. 390.

125. Remote disconnect and reconnect addresses safety concerns for the Evergy workers currently physically performing the disconnection, such as dogs, poison ivy, vehicle accidents, or angry confrontations.[164]

126. Before replacing the AMI meters with AMI-SD meters, Evergy reviewed the prospect by conducting a business case, and also analyzed the financial impact to customers from two different perspectives.[165]

127. The first financial review evaluating the cost to purchase and install AMI-SD meters was based on the proposed change-out schedule and the short-term and on-going O&M savings that would be realized due to the additional capabilities the AMI-SD meters could provide to make operations more efficient. The results indicate that from a financial perspective, customers would be indifferent to the AMI-SD meter change.[166]

128. The second financial review calculated the present value of the AMI meters installed in 2014 at $76 per meter plus the cost to install an AMI-SD meter in 2021 at $125 per meter. This was then compared to the cost of an AMI-SD meter in 2014 at $165 per meter. The present value comparison indicated that installing the AMI meter without SD capabilities in 2014 plus installing an AMI-SD meter in 2021 was less expensive than if the Evergy would have installed AMI-SD meters in 2014.[167]

129. Staff's assessment of the first financial review conducted by the Company is that it does not demonstrate that there are net cost savings to the AMI-SD meter rollout and it does not include the useful life remaining of the existing AMI meters in its calculations. For the second financial review, Staff assesses that the review simply

[164] Tr. Vol. 9, p. 391.
[165] Ex. 21, Caisley Rebuttal, pp. 9-10.
[166] Ex. 21, Caisley Rebuttal, pp. 15-16.
[167] Ex. 21, Caisley Rebuttal, pp. 15-16.

considers whether or not it would have been a better financial decision for the Company to install AMI-SD meters in 2014; however, no party is suggesting Evergy should have installed AMI-SD meters in 2014.[168]

130. Staff also raised concerns about the inputs assumed by Evergy in preparing its business case analysis, including the depreciation rate used, personnel needs, and contractual obligations.[169]

131. Calculating the cost of the new AMI-SD meters must include the cost of the previous AMI meter that is not fully depreciated as well as the cost of labor associated with both the installation of the previous AMI meter and the installation of the new AMI-SD meter.[170]

132. OPC witness Dr. Marke's assessment of the first financial review is that it omitted a critical variable in the analysis, which was the undepreciated balance of the old AMI meters. The exclusion of the undepreciated balance would indicate that it is no longer a cost to the customers. However, this is not as reflected in Evergy's proposed rate base, which includes the old AMI meter along with the new AMI-SD meter that replaced it, as well as software in rate base.[171]

133. Evergy presented several benefits of the AMI meters.[172]

134. None of the benefits that would flow to EMM or EMW from the use of AMI-SD meters were quantified.[173]

[168] Ex. 262, Eubanks Surrebuttal and True-up, p. 6. The 2014 installation of AMI meters is not being challenged as imprudent.
[169] Ex. 262C, Eubanks Surrebuttal and True-up Direct, pp. 7-8 (The Commission notes the particular information is confidential, and thus will not be restated).
[170] Tr. Vol. 9, p. 425
[171] Ex. 308, Marke Surrebuttal, p. 31.
[172] Ex. 49, Lutz Direct, pp. 36-39; and Ex. 117, Lutz Direct, pp. 36-39.
[173] Tr. Vol. 9, p. 435 - 436

135. The reasons for the individual meter exchanges during the test year, as provided in Evergy's field notes, were broken down by Staff into categories in descending order of the most common to least common as follows:

a. To exchange an AMI meter with an AMI-SD meter;

b. To exchange an AMI meter with an AMI-SD meter due to customer arrears;

c. Communication issues;

d. Unknown reasons;

e. Net meter installations;

f. Other (damaged or failing meters, access issues, and customer-requested exchanges).[174]

136. Staff recommended disallowances of meter exchanges where the reason identified in the field notes was for one of the three reasons - (1) the exchange was for the purpose of exchange (category a); (2) when the exchange was due to customer arrears (category b); and (3) for unknown reasons (category d).[175]

137. Evergy testified to the benefits to the customer and the Company of prioritizing customers with balances in arrears for meter exchange. Evergy forecast that post-COVID, an atypically high number of customers would have balances in arrears. Evergy was concerned that if a high number of customers were disconnected, many of them could end up waiting hours for reconnection once a payment was made or a plan established. Evergy argued that meter exchanges to AMI-SD meters for customers with balances in arrears was to ensure that they could be more quickly restored to service with an AMI-SD meter than with a technician physically present to restore service.[176]

[174] Ex. 211, Eubanks Direct, pp. 5-6.
[175] Ex. 211, Eubanks Direct, p. 6.
[176] Ex. 21, Caisley Rebuttal, pp. 18-19.

138. The meter exchanged for "unknown reasons" could come from two places – an order entered without comments or field personnel deciding on a meter exchange while on location. Field personnel making this type of exchange is considered a "pick-up" order by Evergy's system, without a way to enter the reason for the exchange.[177]

139. Staff adjusted its recommended initial disallowance to remove meter exchanges that were listed in the unknown category when there was a meter reader or field employee request for the exchange.[178]

140. While it is reasonable and necessary to replace a meter that is damaged or failing; given that the vast majority (99%) of AMI meters exchanged for AMI-SD meters were less than 7 years old, it is not reasonable to replace a meter solely to gain a new capability or when there is seemingly no reason.[179]

141. Staff recommends that the Commission disallow $6,321,846 for EMM and $2,957,124 for EMW FERC Account 370.2, respectively.[180]

142. Staff multiplied the number of meters per category of recommended disallowance by the cost per meter (depending on meter type) to arrive at its recommended disallowance.[181]

143. OPC's cursory review of Evergy's PISA filings suggest that both EMM and EMW may have exceeded the statutory limits on smart meter investment in 2020 for EMM and 2019 for EMW. OPC recommended that this be added to the list of issues where OPC can provide a recommendation in its position statement.[182]

[177] Ex. 21, Caisley Rebuttal, p. 21.
[178] Ex. 262, Eubanks Surrebuttal and True-up Direct, pp. 4-5.
[179] Ex. 211, Eubanks Direct p. 6.
[180] Ex. 262, Eubanks Surrebuttal and True-up Direct, p. 3.
[181] Ex. 262, Eubanks Surrebuttal and True-up Direct, p. 3.
[182] Ex. 308, Marke Surrebuttal, pp. 42-43.

Conclusions of Law:

No additional Conclusions of Law are necessary.

Issues Presented by the Parties:

A. Should the Commission approve a disallowance related to the replacement of AMI meters with AMI meters that have the capability to disconnect/reconnect service (AMI-SD)?

B. Should the Commission order Evergy Metro to change its deployment strategy so that it no longer prioritizes customers in arrearage?

C. Did Evergy exceed the 6% annual PISA spend limit on AMI meters?

1. If yes, what actions, if any, should the Commission take in response?

Decision:

The Commission agrees with Staff's position that the premature retirement and replacement of AMI meters that still function with AMI-SD meters was not prudent. The Commission therefore will order a disallowance of the AMI-SD meters installed for the three reasons established in Staff's estimate, which were (1) exchange of AMI meter for AMI-SD meter; (2) exchange of AMI meter for an AMI-SD meter due to customer arrears; and (3) unknown reasons.

Evergy witnesses testified that prioritizing customers with balances in arrears for meter exchange was a benefit to customers and the Company. Evergy argued that with the possibility of large numbers of disconnections post-COVID, it was beneficial to those customers in arrears (and thus more likely to experience an involuntary shut-off) because they could more quickly have electricity restored if shut-off. The Commission does not find this rationale credible. Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable.

Installing an AMI-SD meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years

into a 20-year depreciable life. This reasoning is not improved by prioritizing customers in arrears. Similarly, after being adjusted to remove those meters exchanges initiated by the Evergy field personnel, the meters exchanged for unknown reasons were not sufficiently supported in evidence with a valid reason for the exchange of an AMI meter with substantial life remaining. The Commission finds that Evergy has not met its burden of proof regarding the meter exchanges for the three reasons outlined by Staff.

OPC recommended a disallowance of all AMI-SD meters. The Commission disagrees as OPC's recommendation is premised on the assumption that the installation of AMI-SD meters was unjustified and provided no benefit. The Commission does not question the overall benefits provided by AMI-SD meters over AMI meters. There is value in the upgraded technology and benefits provided with the AMI-SD meter. In this case, the benefits of the AMI-SD meters provide value when installed for justifiable reasons, such as replacing manual meters, or an AMI meter that is not functioning.

OPC also presented a question in surrebuttal testimony that Evergy, in purchasing the AMI-SD meters, may have exceeded its PISA limit. However, testimony stated it was based on a cursory review and only recommended further discussion. Of concern to the Commission is that the testimony only suggests that this may be an issue. The lack of evidence regarding this issue precludes a Commission decision at this time.

SUBSCRIPTION PRICING

Findings of Fact:

144. EMM and EMW proposed an opt-in Subscription Pricing Pilot Program (Subscription Pricing).[183]

[183] Ex. 37 (EMM), Hledik Direct, p. 3; and Ex. 112 (EMW), Hledik Direct, p. 3.

145. Evergy has conducted customer surveys regarding Subscription Pricing.[184]

146. The first survey consisted of 39 customers, and the second survey was online.[185]

147. One of the questions posed in Evergy's first survey was "do you want unlimited electricity for a fixed price?"[186]

148. Evergy explained that they referenced an "unlimited" electric plan so that the survey participant can draw a comparison with other "unlimited" plans consumers are traditionally familiar with, such as their subscription with Netflix or wireless phone provider. In other words, the consumer is not charged on a per unit basis (number of movies watched or number of minutes used). They are charged on a flat, monthly price.[187]

149. Evergy stated it will not market or promote subscription pricing to customers as an "unlimited" rate plan.[188]

150. Evergy also distinguished that it was the 2021 customer survey that mentioned the word "unlimited". Evergy states the June 2022 customer survey presented the option as a "Flat Pricing Plan" and was still desired by customers.[189]

151. The description of Flat Pricing that was given in the survey compared it to an unlimited plan for an unrelated subscription service, specifically using the word "unlimited".[190]

[184] Tr. Vol. 10, p. 636.
[185] Tr. Vol. 10, p. 629.
[186] Tr. Vol. 10, pp. 636-637.
[187] Ex. 84, Winslow Surrebuttal, p. 20.
[188] Ex. 84, Winslow Surrebuttal, pp. 20-21.
[189] Ex. 84, Winslow Surrebuttal, pp. 20-21.
[190] Ex. 84, Winslow Surrebuttal, p. 20; Ex. 22, Caisley Surrebuttal, Confidential Schedule CAC-5, p. 35 of 42.

152. Subscription Pricing would provide residential customers with an entirely fixed monthly electric bill, similar to subscription-based services and club memberships.[191]

153. Subscription Pricing removes pricing signals important to programs like cost-based and time of use rates.[192]

154. Subscription Pricing's fixed bill would be based on historical usage of the previous twelve months of weather normalized usage. The customer's bill would remain unchanged for a one-year term. After each one-year term, the usage would be re-averaged for the next one-year term, but there is no true-up.[193]

155. Evergy's customer survey reflected interest in the program for moderate-income households seeking a stable electric bill but renters and low-income customers did not find this plan to fit their lifestyle.[194]

156. Evergy is a monopoly that provides an essential service and does not provide competitive non-essential services like gym memberships or streaming entertainment services.[195]

157. There are thirteen utilities in the United States offering a subscription pricing program.[196]

158. Subscription Pricing, as proposed, is a complex pricing process with a behavioral usage adder, a program cost adder, risk premium adder, efficiency incentive, and other add-on options.[197]

[191] Ex. 37, Hledik Direct, p. 3; and Ex. 112, Hledik Direct, p. 3.
[192] Tr. Vol. 10, p. 619, 18-23.
[193] Ex. 37, Hledik Direct, p. 5 and 19; and Ex. 112, Hledik Direct, p. 5 and 19.
[194] Ex. 82, Winslow Direct, pp. 22-23.
[195] Ex. 242, King Rebuttal, p. 12.
[196] Tr. Vol. 10, p. 504.
[197] Ex. 242, King Rebuttal, p. 12; and see Tr. Vol. 10, pp. 500-503, and 580-581.

159. Subscription Pricing uses weather normalization applied by class to calculate a given Subscription Pricing enrollee's bill.[198]

160. Customers of Subscription Pricing would, on average, pay more under Subscription Pricing than they otherwise would under a standard rate.[199]

161. Evergy seeks waivers of certain mandated billing and payment standards set by Chapter 13 of the Code of State Regulations.[200]

162. Customers may not be able to understand the complex structure of all of the components which make up the ultimate flat rate offered by the Subscription Pricing program.[201]

163. A level pay tool already exists for Evergy customers in the form of the Average Payment Plan.[202]

164. Average Payment Plan participants are exposed to weather-related fluctuations changes in usage, which is different from the proposed Subscription Pricing Plan.[203]

165. OPC recommended a disallowance for the fees associated with Evergy's consultant testimony in regards to Subscription Pricing, stating it is out-of-line with Commission policy.[204]

Conclusions of Law:

No additional Conclusions of Law are necessary.

[198] Tr. Vol. 10, pp. 578-579.
[199] Ex. 323, Kremer Rebuttal, Schedule LAK-R-6; and see Tr. Vol 10, pp. 512-517.
[200] Ex.242, King Rebuttal, pp.11-12.
[201] Ex. 38, Hledik Surrebuttal, pp. 10-11.
[202] Ex. 323, Kremer Rebuttal, p. 14 and 16.
[203] Ex. 38, Hledik Surrebuttal, p. 8.
[204] Ex. 307, Marke Rebuttal, p. 21.

Issues Presented by the Parties:

A. Should the Commission approve the proposed Subscription Pricing Pilot Program?

B. Should the Commission grant Evergy's request for variances to Chapter 13.020 Billing and Payment Standards, which the Company states is needed to implement Evergy's proposed Subscription Pricing Pilot Program?

C. Should the Commission disallow costs related to consultant fees associated with Evergy's Subscription offering?

Decision:

Evergy argues that its two surveys show that customers want Subscription Pricing. A question in the first customer survey mentions unlimited energy and only involves thirty-nine customers. The second survey was conducted online. The second survey can be interpreted to show that customers prefer what the survey calls "Flat Pricing" when offered a choice among the several of Evergy's proposed rates. However, the description of Flat Pricing that was given in the survey used the word "unlimited" and compared Flat Pricing to a plan for an unrelated subscription service. In addition, the results of the survey showed the preference for this type of plan was skewed towards moderate-income households but not renters and low-income customers. While every utility offering may not be preferential for every customer type, alienating a specific customer group which is already at a disadvantage further erodes the desirability of this proposal. The Commission does not find the results of either survey to be credible support for Subscription Pricing.

Subscription Pricing, by Evergy's own admission, removes elements such as weather-related fluctuations in usage which operate as pricing signals to customers in conjunction with rate structures such as TOU rates. The success of TOU rates could be undermined by participation in a program structured like Subscription Pricing.

There is also the unchallenged fact that Subscription Pricing will likely result in higher bills for participants. Because Subscription Pricing, absent other factors, is more likely than not to result in higher bills to customers, the Commission finds it would likely result in unjust and unreasonable rates.

The Commission has set rules that offer protections to utility customers for billing structure to ensure that customers understand what they are being billed and the reasoning for those charges. Evergy asks for variances from these rules to offer customers a bill that reflects only the price of service, but not the detailed breakdown behind it. Evergy by its witness' own admission expects that customers would not comprehend all of the details comprising their bills under the Subscription Pricing program proposal. The Commission is further not persuaded that the Program or its waivers are appropriate.

OPC recommended the Commission disallow the costs of the consultant who testified and put together the Subscription Pricing proposal. OPC argues that the rate design is inherently illegal and so out-of-line with Commission policy that ratepayers should not have to pay for the consultant's testimony supporting that rate design. The Commission is not fully persuaded by OPC's argument, and finds it appropriate to divide the cost equally between shareholders and ratepayers. While this proposed pilot program was ultimately rejected, the Commission does not want to stifle innovation. Therefore, the Commission finds it appropriate that both shareholders and ratepayers should contribute to the cost of this proposal and will disallow 50% of the cost of the Subscription Pricing consultant.

RATE DESIGN/CLASS COST OF SERVICE

Findings of Fact:

166. Evergy's immediately preceding general rate case included an agreement regarding rate design issues, specifically supporting Time of Use (TOU) rates, but with no specific measurable goal or timeline.[205]

167. Starting immediately after its rate case approvals in 2018, the Company began executing on its commitments from the rate design agreement.[206]

168. Evergy then researched, developed, and implemented a 3-period, opt-in TOU rate plan (Whole House) for residential customers as a pilot.[207]

169. An opt-in structure is such that the default is a flat rate or a blocked/tiered rate and a customer may choose to have a time varying rate. The choice of remaining on the status quo flat or blocked/tiered rate is the choice of the customer.[208]

170. An opt-out structure is such that all customers are placed on a TOU rate, which requires a customer to take action to revert to the flat or blocked/tiered rate, or select another rate within the utility's portfolio of rates.[209]

171. Evergy's pilot resulted in 1.1% of the residential customers enrolled in TOU rates over a 20-month period.[210]

172. Evergy conducted surveys which showed customers wanted more rate options, but were hesitant regarding a mandatory TOU rate.[211]

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[205] Ex. 82 (EMM), Winslow Direct, p. 5; and Ex. 128 (EMW), Winslow Direct, p. 5.
[206] Ex. 82, Winslow Direct, p. 5; and Ex. 128, Winslow Direct, p. 5.
[207] Ex. 82, Winslow Direct, p. 5; and Ex. 128, Winslow Direct, p. 5.
[208] Ex. 49 (EMM), Lutz Direct, Schedule BDL-3, p. 36 of 89; Ex. 117 (EMW), Lutz Direct, Schedule BDL-3, p. 36 of 89.
[209] Ex. 49, Lutz Direct, Schedule BDL-3, p. 36 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, p. 36 of 89.
[210] Ex. 49, Lutz Direct, Schedule BDL-3, pp. 36-37 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, pp. 36-37 of 89.
[211] Ex. 23, Caisley Surrebuttal, pp. 6-7.

173. Evergy in this case proposed new opt-in TOU rates with the primary goals of expanding customer choice; reducing system coincident peak demand; and aligning pricing structure with cost causation.[212]

174. For the existing 3-period TOU rate, Evergy proposed two adjustments to (1) align the summer season to June 1 – September 30, and (2) reduce the non-summer price differentials to better reflect cost.[213] The non-summer season runs from October 1 through May 31.[214]

175. The existing 3-period Evergy TOU rate has a 6-times price differential between the on-peak and super off-peak rate.[215]

176. Price differentials are ratios presented to reflect the pricing relationship between the TOU periods (on-peak vs off-peak). For example, 6:1 indicates that the on-peak price is 6-times the off-peak price.[216]

177. Evergy proposes three additional opt-in residential TOU rates – (1) a 2-period TOU rate; (2) a High Differential TOU rate to accommodate the charging patterns of electric vehicle (EV) drivers (High Differential EV TOU rate); and (3) a Separately Metered Electric Vehicle TOU rate which is identical to the High Differential TOU rate with the exception that customers need to have a separate meter for EVs.[217]

178. The Evergy 2-period TOU proposal has a 4-times price differential between on-peak and super off-peak during summer and a 2-times differential between on-peak

[212] Ex. 82, Winslow Direct, p. 7; and Ex. 128, Winslow Direct, p. 7.
[213] Ex. 82, Winslow Direct, p. 18; and Ex. 128, Winslow Direct, p. 18.
[214] Ex. 49, Lutz Direct, Schedule BDL-3, p. 70 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, p. 70 of 89.
[215] Ex. 82, Winslow Direct, p. 17; and Ex. 128, Winslow Direct, p. 17.
[216] Ex. 83, Winslow Rebuttal, p. 2.
[217] Ex. 82, Winslow Direct, pp. 15-16; and Ex. 128, Winslow Direct, pp. 15-16.

and off-peak during winter.[218] This is a new rate proposal that would provide customers who have less ability to shift usage throughout the year an additional TOU rate option and mitigate the bill impact of the 3-period TOU rate typically occurring for space heating customers.[219]

179. The Evergy High Differential TOU rate and the Separately Metered Electric Vehicle TOU rate would both have a 12-times price differential for EMM and a 10-times price differential for EMW.[220]

180. Under the proposed Separately Metered Electric Vehicle TOU rate, the customer is required to install a separate meter for EV charging while providing the customer the option to choose a different rate in Evergy's portfolio for its other home usage.[221]

181. Evergy sees the fundamental purposes of TOU rates to be price signaling of actual costs, and creation of elasticity in demand to improve efficiency of resources.[222]

182. Staff did not support Evergy's proposed opt-in TOU rates because Staff viewed Evergy's TOU rates as not being cost-based.[223] However, Staff stated that Evergy's 2-period TOU rate structure is the less objectionable of the residential TOU rates proposed by Evergy.[224]

183. Staff recommended the transition of EMM and EMW residential rate schedules to a default time-based rate structure consistent with two other Missouri

[218] Ex. 82, Winslow Direct, p. 18; Ex. 128, Winslow Direct, p. 18; Ex. 49, Lutz Direct, Schedule BDL-3, pp. 66-67, 70-71 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, pp. 66-67, 70-71 of 89.
[219] Ex. 82, Winslow Direct, p. 16; and Ex. 128, Winslow Direct, p. 16.
[220] Ex. 82, Winslow Direct, p. 19; and Ex. 128, Winslow Direct, p. 19.
[221] Ex. 82, Winslow Direct, p. 16; and Ex. 128, Winslow Direct, p. 16.
[222] Ex. 83, Winslow Rebuttal, p. 3.
[223] Tr. Vol. 11, p. 747.
[224] Ex. 243, Sarah Lange Rebuttal, p. 52.

utilities. The Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) default TOU approach is a modest on-peak overlay included in the default residential rate design. The Empire District Electric Company d/b/a Liberty (Empire) default TOU approach employs a modest off-peak discount overlay and was also included in the default residential rate design.[225]

184. Staff's recommended TOU default rate during the summer is a one cent premium during on peak times, and an off-peak discount of one cent during off peak time. During non-summer months, the TOU is a one-quarter of one cent ($0.0025) premium during on-peak times, with the one cent off-peak discount remaining the same.[226]

185. Under Staff's recommended TOU rate, if a customer who uses approximately 1,000 kWh a month consumes a lot of their energy over night, they can expect to see their monthly bills go down by about $10 each month. If a customer who uses around 1,000 kWh a month consumes a lot of their energy in the afternoon and early evening, they can expect to see their bills go up by about $10 each month. If a customer is able to change when they use energy, they can save about $20 per month. But under Staff's plan, no customer will have a TOU-related bill increase of more than one cent per kWh in the summer, or one cent for each 4 kWh the rest of the year, and even that increase will only apply if that customer uses all of their energy between 4:00 p.m. and 8:00 p.m.[227]

[225] Ex. 229, Sarah Lange Direct, p. 17.
[226] Tr. Vol. 11, p. 746; Ex.265, Sarah Lange Surrebuttal, p. 34.
[227] Ex. 229, Sarah Lange Direct, p. 45.

186. Staff witness Sarah Lange argues that Staff's proposed TOU rates are a customer friendly approach, which will mitigate the impact of TOU rates to customers with energy-intensive HVAC units.[228]

187. Among investor-owned electric utilities in Missouri, TOU rates have been a recent addition and are not widespread.[229]

188. Even though opt-in TOU rate deployment is more common, some utilities have deployed TOU on an opt-out or mandatory basis, most of which were deployed in the last two years.[230]

189. States and commissions have adopted different approaches regarding opt-in versus opt-out TOU rates.[231]

190. Customer satisfaction under TOU remains high with either opt-in or opt-out. However, opt-out rates have higher enrollment rates relative to opt-in rates.[232]

191. The cost to provide energy to customers varies with the time of day due to demand, that is, competition for that energy. The driver of Staff's low differential TOU rate proposal is that energy generally costs more in certain time periods, and that historically ratemaking has not sufficiently recognized the cost-based difference of a kWh consumed at 6:00 p.m. versus being consumed at 2:00 a.m.[233]

[228] Ex. 229, Sarah Lange Direct, p. 41.
[229] Ex. 83, Winslow Rebuttal, p. 6.
[230] Ex. 49, Lutz Direct, Schedule BDL-3, pp. 36-37 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, pp. 36-37 of 89.
[231] Ex. 49, Lutz Direct, Schedule BDL-3, pp. 36-37 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, pp. 36-37 of 89.
[232] Ex. 49, Lutz Direct, Schedule BDL-3, pp. 36-37 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, pp. 36-37 of 89.
[233] Ex. 229, Sarah Lange Direct, pp. 18-19.

192. Moving customer usage from on-peak to off-peak is beneficial, but was not the driving design criteria of Staff's TOU proposal.[234]

193. Third-party reviews show half of TOU rate price differentials are at least 10 cents per kWh. Staff's recommended low differential TOU rate of one cent per kWh is an outlier in the industry.[235]

194. Analysis of TOU programs show that as the price differential increases, customers shift usage in greater amounts.[236]

195. TOU rate designs are not well suited for customers with loads that cannot be shifted.[237]

196. Customers who do not save money at the level they expect under a TOU rate did not remain in the program.[238]

197. Among investor-owned electric utilities in Missouri, the price differentials are conservative – Ameren Missouri's introductory rate was described as a low differential, and Empire began offering a two-cent differential in October of 2022.[239]

198. One of the primary benefits of AMI meters is the ability to price electricity closet to the true cost of service through TOU rates.[240]

199. Evergy witness Miller recommends Evergy's summer inclining block rate with no further change for the default residential rate structure.[241]

[234] Tr. Vol. 11, pp. 781-782.
[235] Ex. 83, Winslow Rebuttal, pp. 4-5.
[236] Ex. 83, Winslow Rebuttal, p. 5.
[237] Ex. 49, Lutz Direct, Schedule BDL-3, p. 38 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, p. 38 of 89.
[238] Ex. 229, Sarah Lange Direct, p. 41.
[239] Ex. 83, Winslow Rebuttal, p. 6.
[240] Ex. 306 - EMW, Marke Direct, p. 16; Ex. 306 – EMM, Marke Direct, p. 10.
[241] Ex. 61, Miller Surrebuttal, p. 29.

200. Staff witness Sarah Lange recommends that Evergy's summer inclining block rare should be the default residential rate for customers who opt-out of Staff's proposed default TOU rates.[242]

201. Evergy recommends several changes to the residential class rate design to "clean-up" the residential tariff.[243] The rates to be eliminated were previously frozen.[244] These changes include the elimination of specific rates and transitioning those customers to existing rates.[245]

202. Staff agreed that duplicative rate codes should be eliminated, as most are the legacy of prior mergers and rate schedule consolidation that have become obsolete.[246]

203. To date, Evergy has completed more than 13 studies on TOU.[247]

204. Evergy has arguably had eight years to prep their customers for the value proposition of TOU rates since beginning installation of AMI meters.[248]

205. Given the customer education provisions of the 2018 stipulation,[249] EMM has spent $1,386,936 and EMW has spent $1,692,041 on TOU program costs, and EMM has spent $98,788 on customer education costs related to TOU and EMW has spent $24,000. Therefore, Evergy's customers at large should be well-educated on both the

[242] Ex. 229, Sarah Lange Direct, pp.51-52.
[243] Ex. 59, Miller Direct, p. 3; and Ex. 119, Miller Direct, p.3.
[244] Ex. 59, Miller Direct, pp. 12-17; and Ex. 119, Miller Direct, pp.12-17.
[245] Ex. 59, Miller Direct, p. 3; and Ex. 119, Miller Direct, p.3.
[246] Staff Initial Brief, p. 34.
[247] Ex. 306 - EMW, Marke Direct, p. 7; Ex. 306 – EMM, Marke Direct, p. 7.
[248] Ex. 307, Marke Rebuttal, p. 14.
[249] "Non-Unanimous Partial Stipulation and Agreement Concerning Rate Design Issues" issued on September 25, 2018 in cases ER-2018-0146 and ER-2018-0145.

general economic underpinning and the potential bill impacts of rates that vary with the time of day at which energy is consumed.[250]

206. One of the benefits of AMI meters is the ability to offer TOU rates.[251]

207. Residential customers currently have access to multiple non-TOU rates, such as Residential General Use, Residential General Use and Space Heater; and Residential Other Use.[252]

208. The price differential ratio is the single biggest factor affecting a customer's realized behavioral change.[253]

209. Staff proposed a residential customer charge for both EMM and EMW of $12.00. Staff calculated that amount by increasing the current EMM residential customer charge by the percentage adjustment of the EMM residential class revenue requirement, rounded to the nearest quarter.[254]

210. Evergy proposed a residential customer charge of $16.00 for both EMM and EMW.[255]

211. The residential classes will receive above-system-average rate increases.[256]

212. Raising the residential customer charge diminishes the customer incentive to be more energy efficient.[257]

[250] Ex. 229, Sarah Lange Direct pp. 15-16.
[251] Ex. 23, Caisley Surrebuttal, p. 17.
[252] Ex. 229, Sarah Lange Direct pp. 8-9.
[253] Tr. Vol. 11, pp. 719-720.
[254] Ex. 265, Sarah Lange Surrebuttal, pp. 30-31.
[255] Ex. 59, Miller Direct, p. 43; and Ex. 119, Miller Direct, p.34.
[256] Ex. 265, Sarah Lange Surrebuttal, p. 32.
[257] Tr. Vol. 10, p. 619.

213. Evergy proposed a $3.25 customer charge for customers with a second meter.[258]

214. Staff's calculation indicated the customer charge for a second meter is $4.11. Therefore, Staff proposed the customer charge for a second meter should be in the range of $4.25 to $5.00.[259]

215. Evergy's current and proposed residential TOU rates cannot be used by net metering customers due to statutory provisions that have not been updated to reflect dynamic rates.[260]

216. Staff's proposed low differential TOU rate, which is an adder to the existing residential general use rate, can be used by net metering customers with no need for legislative or tariff changes.[261]

217. Evergy, in the Stipulation and Agreement filed on August 30, 2022, (Revenue Requirement Stipulation) committed to developing a report that examines the technical, billing, and legal barriers to offering further TOU rate options to residential customer-generators with net-metering or interconnection agreements.[262]

218. The Revenue Requirement Stipulation was approved by the Commission on September 22, 2022.[263]

219. Evergy witness Kimberly Winslow estimated that for each customer enrolling in one of its opt-in TOU programs it would take approximately $150 per in marketing and education costs, $150 in customer acquisition cost.[264] The only basis to

[258] Ex. 243, Sarah Lange Rebuttal, p. 50.
[259] Ex. 243, Sarah Lange Rebuttal, p. 50.
[260] Ex. 49, Lutz Direct, Schedule BDL-3, p. 43 of 89; Ex. 117, Lutz Direct, Schedule BDL-3, p. 43 of 89.
[261] Tr. Vol. 11, pp. 689-690.
[262] Revenue Requirement Stipulation, para. 7(e).
[263] Order Approving Four Partial Stipulations and Agreements, issued September 22, 2022.
[264] Ex. 82, Winslow Direct, p. 54; and Ex. 128, Winslow Direct, p. 54.

support the $150 customer acquisition estimate is a statement that it is based on Evergy's experience. If Evergy's opt-in TOU rates are approved, it asks that it be authorized to recover prudently incurred program costs at a not-to-exceed acquisition cost of $150 per customer.[265]

220. Providing optional programs that lose $150 per participant, to be spread out to other ratepayers, is unreasonable.[266]

221. Evergy proposed changes for non-residential customers' rate schedules, design and structure – (1) a new time-related pricing rate; (2) seasonal alignment (changing EMM to match EMW); (3) consolidation of rates/codes; and (4) elimination of select end use rates.[267]

222. Evergy proposed the elimination of the Residential Other Use rate.[268]

223. Staff proposed a default TOU rate for non-residential customers using the same price differentials as proposed for the residential customers.[269]

224. Evergy witness Miller argues that Staff's non-residential TOU proposal does not consider the broad set of customers and the unique rate structures that exist across jurisdictions.[270]

225. Evergy has not had discussions with its commercial and industrial customers regarding the possibility of mandatory TOU rates.[271]

[265] Ex. 82, Winslow Direct, p. 54; and Ex. 128, Winslow Direct, p. 54.
[266] Ex. 243, Sarah Lange Rebuttal, pp. 2-3.
[267] Ex. 59, Miller Direct, pp. 45-47; and Ex. 119, Miller Direct, pp.34-39.
[268] Ex. 58, Miller Direct, pp. 45-47; and Ex. 118, Miller Direct, pp.34-39.
[269] Ex. 229, Sarah Lange Direct, p. 60.
[270] Ex. 61, Miller Surrebuttal, p. 30.
[271] Tr. Vol. 11, p. 711.

226. MECG opposed Staff's proposed default TOU rates for the large power service (LPS) and large general service (LGS) rates.[272] MECG's opposition is due to the lack of a rate to evaluate and a lack of information regarding an impact analysis of the proposed changes to the LPS and LGS customer classes.[273]

227. Generally, for the commercial and industrial classes, Evergy proposed to apply 125% of each class increase to the fixed cost rate components (i.e. customer charges and demand charges) and 75% to the variable cost rate components (i.e. energy charges).[274]

228. The Revenue Requirement Stipulation states that EMW's Large Power Service voltage differential for pricing of energy blocks will be re-implemented.[275]

229. MECG supports Evergy's proposed rate design for commercial and industrial customers.[276]

230. Both OPC and MECG propose that Evergy should meet with stakeholders related to its rate modernization plan within 180 days after the effective date of rates in this case.[277]

231. Evergy meets with stakeholders on a periodic basis and is not opposed to discussing the rate modernization plan with interested parties.[278]

232. In the Revenue Requirement Stipulation, the signatories agreed to true-up revenues and billing determinants with the residential class's revenues by season

[272] Ex. 405, Maini Rebuttal, p. 4; Ex. 406, Maini Rebuttal, p.4.
[273] Ex. 405, Maini Rebuttal, p. 12; Ex. 406, Maini Rebuttal, pp. 13-14.
[274] Ex. 59, Miller Direct, pp. 43-44; and Ex. 119, Miller Direct, p. 35.
[275] Revenue Requirement Stipulation, p. 12.
[276] Ex. 403, Maini Direct, p. 34; Ex. 404, Maini Direct, p. 34.
[277] OPC Position Statement p. 30 and MECG Position Statement p. 16.
[278] Evergy Position Statement p. 36.

provided.[279] The Revenue Requirement Stipulation provides that Evergy's proposed Seasonal Alignment with no impact on revenues will be adopted, consistent with the true-up billing determinants.[280]

Conclusions of Law:

CC. In undertaking the balancing of interests 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.[281]

Issues Presented by the Parties:

> B.[282] What are the appropriate rate schedules, rate structures, and rate designs for the non-residential customers of each company?
>
> D. What are the appropriate rate schedules, rate structures, and rate designs for the Residential customers of each utility?
>
> 1. What is the appropriate residential customer charge?
>
> E. What measures are appropriate to facilitate implementation of the appropriate default or mandatory rate structure, rate design, and tariff language for each rate schedule?
>
> F. Should the Company's proposed Time of Use rate schedules be implemented on an opt-in basis?
>
> G. Should the Staff's proposed Time of Use rate schedules be implemented on a mandatory basis?
>
> K. Should the Commission order Evergy to meet with stakeholders related to its rate modernization plan within 180 days after the effective date of rates in this case?

[279] Revenue Requirement Stipulation, para. 3; see also Exhibit 2, billing determinants, attached to the Revenue Requirement Stipulation and marked confidential.
[280] Revenue Requirement Stipulation, para. 7(a).
[281] *Federal Power Comm'n v. Natural Gas Pipeline Co*., 315 U.S. 575, 586 (1942).
[282] The original lettering is retained here – the missing letters correspond to resolved issues.

L. Should Evergy work to improve the education of its customers regarding the billing options and rate plans it has currently?

Decision:

Residential Rates, Schedules and Structures; Opt-In Versus Opt-Out; High Price Differential Versus Low Price Differential; and Customer Education

Several of the parties to this case are supportive of TOU rates in general. The disagreements form around opt-in versus opt-out and a high price differential versus a lower price differential. The Commission sees a benefit in incorporating a mix of these approaches.

Evergy proposes four opt-in TOU rates for residential customers, which reflect higher differentials than Staff's lower TOU rate proposal. A high differential allows higher levels of savings for those customers who are able to change their energy usage times. Evergy's opt-in approach is based on the recommendation to provide its customers with the option of selecting the rates that work for them. Under this approach, Evergy's base default rates would be the standard flat rates. One of the primary benefits of AMI is the ability to provide customers with TOU rates. Given eight years of experience with AMI, millions of dollars invested in AMI across Evergy's footprint and many studies regarding TOU rates, the Commission is concerned with taking the status quo approach that currently reflects only minimal (1.1%) residential adoption of TOU rates.

Staff's recommendation included a low differential opt-out TOU rate in the form of an approximately two-cent swing between on- and off-peak pricing. Staff's proposal uses a low differential rate to offer more protection for the customers that cannot change usage times. The basis for Staff's low differential proposal is that it is the "training wheels" approach for introducing TOU rates to customers that currently are not and have never

been enrolled in Evergy's TOU pilot. The Commission finds Staff's approach of implementing TOU rates as a default or opt-out rate is a better approach to introduce residential customer to TOU rates, since opt-out TOU rates result in higher enrollment. However, Staff's low differential rate, even though it would provide protections to some customers, does not provide sufficient incentive or opportunities for customers to see savings from TOU rates. Therefore, the Commission does not agree with Staff's low differential TOU rate being the introductory default TOU rate for residential customers.

Offering both high and low differential TOU rates will allow for more customer choice, will sufficiently introduce TOU rates to customers and will allow a higher differential rate to exhibit the benefits that derive from TOU rates. But the Commission also understands that allowing the option to opt-into a lower differential rate may better suit certain customers' lifestyles. As both Evergy's and Staff's proposals have multiple benefits, the Commission will authorize modified versions of both. The Commission finds Evergy's 2-period TOU rate, with a 4-times price differential between on-peak and super off-peak during summer and a 2-times differential between on-peak and off-peak during winter, to be the best introductory high differential TOU rate for residential customers as it has the lowest differential of Evergy's high differential TOU rates while still providing a benefit to those customers seeking substantial savings by altering the time of day of their energy consumption. Therefore, the Commission will order that Evergy's 2-period TOU rate be established as the default residential customer rate with Staff's low differential TOU rate as an opt-in TOU rate.

Given the high differential in the 2-period TOU rate and Evergy's customer surveys showing hesitancy regarding TOU rates, this 2-period high differential rate should take effect beginning on October 1, 2023, to correspond to the start of non-summer TOU

season. This will allow more time for customer education prior to implementation and have the transition occur when the rate differential is lower. Additionally, the transition to TOU default rates shall be phased-in between October 1, 2023 and December 31, 2023. The phase-in shall occur by appropriate groupings of customers on the appropriate customer's billing cycle such that the TOU implementation for all Evergy customers shall be completed by December 31, 2023.

To assist Evergy with developing customer education and outreach regarding TOU rates, the Commission will convene a workshop to that effect under a separate File Number. As no expense amounts are included in the rates approved in this case for customer education and outreach costs associated with the implementation of mandatory and optional TOU rates, the Commission will also authorize the tracking of these costs for consideration and possible recovery in Evergy's next rate case. Evergy will be directed to submit quarterly reports detailing the types and amounts of any education and outreach expenses deferred.

Evergy's additional proposed TOU rates (3-period TOU rate; the High Differential EV TOU rate; and the Separately Metered Electric Vehicle TOU rate) will further advance customer choice. The Commission finds these additional proposed TOU rates reasonable and will also approve them as opt-in rates. Residential customers who are not currently on a TOU rate plan, will be assigned to the 2-period TOU rate automatically, and may opt-in to either Staff's low differential, Evergy's 3-period, High Differential EV rate or Separately Metered EV rate. Existing 3-period TOU customers shall stay on their existing 3-period TOU rate during and after the transition of non-TOU residential customers to the 2-period TOU rate unless those customers request to opt-in to the 2-period TOU rate or any other available residential TOU rate.

The Commission is not approving any traditional ratemaking structure for residential customers to be used after December 31, 2023, when the transition to TOU default rates is completed, with the exception of those residential customers without AMI meters. Since TOU rates are only available to customers with AMI meters, the Residential General Use rate (without space heating) will remain available for any customers without AMI meters.

The Commission recognizes that Evergy's TOU rates do not currently work for net metering customers due to the limitation of the current legislation. The parties agree that Staff's low differential rate can be used for net metering customers. As a result, Staff's low differential TOU rate shall be the default rate for net metering customers when Evergy's 2-period TOU rate is established as the default residential customer rate for the non-net metering customers.

Evergy has proposed the elimination of several residential rate codes, which were either previously frozen or are duplicative with other existing rate codes. Staff agrees with the removal of duplicative rate codes. Therefore, the Commission will order the elimination of the rate codes identified in this case. However, to avoid customer rate codes being switched multiple times in a short period, the elimination of the rate codes shall be delayed until the relevant customers are switched to a TOU rate. The rate code elimination, therefore, will begin October 1, 2023, and be phased-in in conjunction with those customers' transfer to the 2-period TOU rates; with rate code elimination ending no later than December 31, 2023.

On September 22, 2022, the Commission approved the Revenue Requirement Stipulation, which included revenue requirements, true-up revenues and billing determinants agreed to by the signatories. Therefore, the Commission finds that

inter-season design of residential rates shall be based on the determinants and seasonal revenue agreed to by the signatories to that stipulation. The revenue requirement used shall not exceed the revenue requirement specified in the Revenue Requirement Stipulation.

To summarize, residential rates for Evergy are authorized to be Evergy's 2-period TOU proposed rate as the default rate beginning October 1, 2023. Staff's low differential rate is approved as an opt-in rate, without a lead-in time. Evergy's additional residential TOU proposals are also authorized on an opt-in basis, without a lead-in time. Customers are authorized to opt-out of the default high differential rate into one of the four additional TOU rates approved here. Existing 3-period TOU customers shall stay on their existing 3-period TOU rate during and after the transition of non-TOU residential customers to the 2-period TOU rate unless those customers request to switch to the 2-period TOU rate or an alternative opt-in TOU rate. Evergy shall implement a program to engage and educate customers in the approximate ten-month lead-in time until its 2-period TOU rate takes effect as the default rate for residential customers beginning October 1, 2023. Evergy shall work with Staff and OPC and permit them a chance to review materials related to the education program and to the implementation of TOU rates from October 1 through December 31, 2023, to ensure the program and implementation have a maximum potential for success. Further Evergy will eliminate the identified residential rate codes and transition customers to the identified existing codes on or after October 1, 2023, as they transition to the 2-period TOU rate.

Net Customer Acquisition Cost

Evergy proposed that the Commission authorize deferral for prudently incurred program costs, such as marketing, education, and administration, for its proposed

residential TOU rates at a net customer acquisition cost of no more than $150 per customer. No other party was in favor of the net customer acquisition cost. There is no evidence in the record to suggest how the $150 was computed or to explain the need for a net customer acquisition cost. Furthermore, the Commission finds that if TOU rates are implemented on an opt-out basis instead of an opt-in basis as proposed by Evergy, there should be no acquisition process. The Commission is not persuaded that it is "more likely than not" that the proposed $150 net customer acquisition cost would be just and reasonable.

Residential Customer Charge

The Commission agrees with Staff's recommendation regarding the appropriate residential customer charge. As Evergy begins offering multiple TOU rates, it is important to foster customer interest, with one of the proven ways being to allow customers to impact their monthly electric bill. It is likely that significantly raising the residential customer charge will mute the TOU pricing signals such that interest or follow-through with TOU rates will wane as they cannot achieve their expected savings from TOU mitigation due to a higher customer charge. Ratemaking decisions are often interdependent, and the Commission's decision here is based on moving forward with TOU rates and authorizing a smaller increase than Evergy requested to the customer charge in order to foster the growth of the TOU rates. The Commission will re-evaluate the growth of the TOU programs and the monthly customer charge in Evergy's next rate case. In the present case, the Commission finds that $12.00 is the appropriate residential customer charge for all single-metered residential customers. Given that one of the opt-in TOU rates approved by the Commission requires a second meter, the Commission finds it appropriate to have a separate customer charge requirement for residential

customers with a second meter. Therefore, all residential customers with a second meter shall be charged a customer charge of $3.25 for the second meter.

Non-residential Rates, Schedules and Structures

Given the unique make-up of non-residential customers, including small business, such as gas stations and restaurants, whose power consumption is customer driven, the Commission does not find Staff's proposed default TOU rate for non-residential customers appropriate without further study. The Commission agrees with Evergy's proposal for non-residential rates, schedules and structure, which MECG supported. Evergy proposed a new Time-Related Pricing rate, seasonal alignment matching EMM to EMW, code consolidation and elimination of select end use rates. The Commission is persuaded that the expansion of rate offerings while simplifying the codes and end use rates will improve customer satisfaction, efficiency and will result in just and reasonable rates to non-residential customers.

Meeting with Stakeholders

The parties also presented the question of Evergy being ordered to meet with stakeholders related to its rate modernization plan. Evergy stated it meets with stakeholders on a periodic basis and is not opposed to discussing the rate modernization plan with interested parties. Therefore, the Commission memorializes here that this meeting shall occur.

RATE BASE and RESOURCE PLANNING

The Commission is combining the two issues involving coal-fired generation.

Findings of Fact:

233. Generally, Sierra Club faulted Evergy for using the results of its Depreciation Study to set unit retirement dates for its coal fleet. Sierra Club suggested

instead an optimized capacity expansion model, which would allow the model to select retirement dates.[283]

234. Sierra Club stated that Evergy performed no optimized economic analyses on the projected performance of its coal fleet for its 2021 IRP.

235. Capacity expansion software is a tool that simply compares going-forward costs of the available alternatives and determine the lowest-cost option to meet capacity and energy requirements, subject to any modeling constraints (e.g., import limitations or annual build limits).[284]

236. As part of the joint resolution following the 2021 IRP, Evergy is utilizing capacity expansion modeling beginning with the 2022 Annual Update.[285]

237. Sierra Club asserted that Evergy has not demonstrated that continued investment in its coal fleet is the prudent and least-cost option to provide reliable power to ratepayers as part of these dockets or as part of its 2021 IRP.[286]

238. Sierra Club alleged that Evergy could retire one or even two of its existing coal units and would not need to replace the capacity for at least another decade.[287]

239. EMM has generation in excess of its customers' needs; while EMW does not have enough SPP accredited generation capacity to meet its peak. Combined, the two have enough SPP accredited generation to meet the combined loads.[288]

240. Having enough capacity is essential to having enough energy to meet customers' load requirements. However, having enough capacity does not necessarily ensure that energy will be available when it is needed. For instance, EMW does not have

[283] Ex. 450, Glick Direct, pp. 17-18.
[284] Ex. 56, Messamore Rebuttal, p. 13.
[285] Ex. 56, Messamore Rebuttal, p. 13.
[286] Ex. 450, Glick Direct, p. 4.
[287] Ex. 450, Glick Direct, p. 21.
[288] Ex. 302, Mantle Rebuttal p.4.

enough generation capacity through its owned resources and purchased power agreements to meet the SPP resource adequacy standards. It can only meet the SPP resource adequacy standards when combined with EMM. EMW's resource plan depends on EMM to provide capacity and on SPP to provide energy.[289]

241. EMM's generation produces revenue on the SPP energy market that offsets fuel costs and some of its load costs. The revenues produced by EMW's generation covers the fuel cost but does not offset much of its load costs. EMW relies on the market to provide the electricity needed by its customers.[290]

242. In the simplest terms, capacity is the maximum output an electricity generator can physically produce, measured in megawatts. Energy is the amount of electricity a generator produces over a defined period of time. For example, a generator with a capacity of 100 MW that runs at full capacity for 10 hours generates 1,000 MWh (100 MW * 10 hours = 1,000 MWh) of energy.[291]

243. During Winter Storm Uri, EMW incurred more than $315 million in fuel and purchased power expenses. In File No. EF-2022-0155, EMW requested to recover more than $300 million of those costs from its customer through securitization.[292]

244. The Commission's approach to IRPs involves the comparison of a variety of resource plans (including different combinations of retirements and demand-side/supply-side additions) to assess which is the lowest cost, and allows for the assessment of the value of incremental changes to the resource plan. The IRP process and the capacity expansion model have the same goal.[293]

[289] Ex. 302, Mantle Rebuttal p. 10.
[290] Ex. 302, Mantle Rebuttal, p. 5.
[291] Ex. 302, Mantle Rebuttal, pp. 9-10.
[292] Ex. 302, Mantle, Rebuttal, p. 7, 17.
[293] Ex. 56, Messamore Rebuttal, p. 13.

245. When determining the acquisition, continuation, or retirement of any resource, the availability of fuel and the dispatchability of the resource, along with meeting environmental regulations needs to be considered. No one type of resource on its own can meet all of the requirements of a prudent resource plan; however, a diverse portfolio of resources will.[294]

246. Sierra Club's testimony did not mention generation types or discuss any base load alternatives in its discussion of the retirement of current base load units.[295] Sierra Club's analysis did not account for Evergy's need to have sufficient capacity and meet reserve margin requirements.[296]

247. Base load generating units/plants are electric power sources that operate continuously to meet minimum levels of power demand on a 24/7 basis. Base load plants are usually large scale and are key components of an efficient and reliable electric grid. Base load plants are not designed to respond to peak demands or emergencies. Examples of base load units include coal and nuclear power plants.[297]

248. Intermediate power plants/units are used during the transition between base load and peak load demand. These plants are not as difficult to ramp up as base load plants or as expensive to operate as peak load plants. Wind and solar and some natural gas power plants fall in the intermediate category. Because wind and solar resources are intermittent by nature, and the electricity they generate fluctuates with the weather and the time of day, they cannot be depended on to meet peak demand or to provide energy on a consistent basis for base load purposes.[298]

[294] Ex. 302, Mantle Rebuttal, p. 14.
[295] Ex. 241, Hull Rebuttal, p. 6.
[296] Ex. 56, Messamore Rebuttal, pp. 11-12.
[297] Ex. 241, Hull Rebuttal, p. 4.
[298] Ex. 241, Hull Rebuttal, pp. 4-5.

249. A peaking power plant (commonly referred to as a “Peaker plant”) is one that can switch on when additional power is needed, which will come online without much delay, and will start generating power on a moments' notice. Once a peak has passed, they are returned to standby mode for future peaks. Peaker plants are often used much less frequently over the course of a year than base and intermediate plants.[299]

250. A dispatchable resource provides electricity when the electricity is needed. Fossil fuel units are units that can be relied on to generate electricity when needed, *i.e.* dispatched, when fuel is available. When it is not needed to generate electricity, the plant does not generate. Renewable generation is not completely dispatchable.[300]

251. A good resource portfolio is one that contains diverse types of generation resources, each with its own strengths and weaknesses that are chosen to meet the unique load demands of the utility’s customers in all hours of the year while also minimizing the risk of high utility bills and loss of service.[301]

252. OPC disagreed with Sierra Club’s recommendation to begin a process of retiring Evergy’s coal plants.[302]

253. Sierra Club recommended a disallowance for EMM pertaining to capital costs and O&M for La Cygne Units 1 and 2 and Iatan 1 on the basis that EMM has not demonstrated the prudence of continuing to operate the plant relative to retirement and replacement with alternatives.[303]

[299] Ex. 241, Hull Rebuttal, p. 5.
[300] Ex. 302, Mantle Rebuttal, p. 13.
[301] Ex. 302, Mantle Rebuttal, p. 14.
[302] Tr. Vol. 8, p. 272.
[303] Ex. 450, Glick Direct, p. 4; and Ex. 451, Glick Direct, p. 4 (Confidential version).

254. Sierra Club recommended a disallowance for EMW pertaining to capital costs and O&M for Jeffrey Units 1-3 and its share of Iatan Unit 1 on the basis that EMW has not demonstrated the prudence of continuing to operate the plant as compared to retirement and replacement with alternatives.[304]

255. La Cygne is a two-unit, coal-fired power plant near La Cygne, Kansas. Unit 1 is 873 megawatts (MW), and Unit 2 is 685 MW, for a combined nameplate capacity of 1,558 MW. Unit 1 came online in 1973, and Unit 2 came online in 1977. EMM owns 50% of both units, and Evergy Kansas owns the other 50%. In the preferred plan of EMM's 2021 IRP, Unit 1 is set to retire in 2032, and Unit 2 is set to retire in 2039.[305]

256. Iatan is a two-unit, coal-fired plant near Weston, MO. Unit 1 is 726 MW and Unit 2 is 999 MW, for a combined nameplate capacity of 1,725 MW. Unit 1 came online in 1980, Unit 2 came online in 2010. EMM owns 61% of the plant and EMW owns 18%. The remainder is owned by non-affiliated entities. In the preferred plan of Evergy MO's 2021 IRP, Iatan Unit 1 is slated to retire in 2039 and Iatan Unit 2 is slated to retire in 2070.[306]

257. Jeffrey is a three-unit, coal-fired plant located in Emmet Township in Pottawatomie County, Kansas. Each of the three units has a nameplate capacity of 740 MW, for a total capacity of 2,220 MW. EMW owns 8% (175 MW) of the Jeffrey plant, and Evergy Kansas owns the other 92%. Unit 1 came online in 1978, Unit 2 in 1980, and Unit 3 in 1983. Jeffrey Units 1 and 2 are set to retire in 2039, and Unit 3 is set to retire in 2030.[307]

[304] Ex. 450, Glick Direct, p. 5; and Ex. 451, Glick Direct, p. 5 (Confidential version).
[305] Ex. 450, Glick Direct, p. 8.
[306] Ex. 450, Glick Direct, p. 7.
[307] Ex. 450, Glick Direct, p. 7.

258. Generally, Sierra Club's concern was that continuing operations of coal plants could lead to large capital expenditures caused by future environmental regulations, and that such investment could then influence the continued use of the plant.[308]

259. Sierra Club asserted that the continued operation of all but two of Evergy's coal plants is potentially imprudent and thus all O&M and capital costs incurred at those facilities during the test year should be disallowed because of its dissatisfaction with Evergy's IRP process.[309]

260. EMW, as an 8% minority owner in the Jeffrey Energy Center, would not control a retirement decision.[310]

261. Sierra Club calculated that each of the plants incurred costs in excess of the value of its energy and capacity over the past five years, with the exception of 2021 (referring to Winter Storm Uri[311]).[312] However, Sierra Club's calculation did not reflect how expenses are passed on to ratepayers.[313]

262. Sierra Club concluded from its analyses that the historical net revenues for the period 2017 to 2020 were significantly higher when the full capital expense amount was allocated to the year it was incurred when compared to when the capital expenses were amortized.[314]

263. Utilities typically amortize capital expenditures (based on the utility's cost of capital) and spread the costs out over the remaining economic life of the plant.[315]

[308] Ex. 450, Glick Direct, p. 13.
[309] Ex. 56, Messamore Rebuttal, p. 13.
[310] Ex. 56, Messamore Rebuttal, p. 8.
[311] Ex. 450, Glick Direct, pp. 23-24; and Ex. 451, Glick Direct, pp. 23-24 (Confidential version).
[312] Ex. 450, Glick Direct, pp. 21-22; and Ex. 451, Glick Direct, pp. 21-22 (Confidential version).
[313] Ex. 450, Glick Direct, pp. 32-33; and Ex. 451, Glick Direct, pp. 32-33 (Confidential version).
[314] Ex. 450, Glick Direct, p. 27 and 35; and Ex. 451, Glick Direct p. 27 and 35 (Confidential version).
[315] Ex. 450, Glick Direct, p. 33

264. Evergy argued that Sierra Club's analyses simply compare costs to market values of energy, ancillary services, and capacity, and assert that if costs are greater than total revenues, the continued operation of the plant must be imprudent. This type of analysis does not consider that Evergy needs to have sufficient economic capacity to serve customers and meet reserve margin requirements. [316]

265. Sierra Club's claim that almost 1,700 MW of capacity (over 4,300 MW if the capacity of those units which EMW and EMM do not own is included) should be retired on the basis of costs exceeding revenues and not including any assessment of costs for replacement capacity is not prudent.[317]

266. A prudent electric utility analysis of retiring a generating plant should include an assessment of the cost to replace its capacity.[318]

Conclusions of Law:

No additional Conclusions of Law are necessary.

Issues Presented by the Parties:

Resource Planning

A. Has EMW been imprudent in its resource planning process?
   1. If yes, how should EMW's fuel and purchased power costs be determined?
   2. If yes, how should EMW's FAC base factor be calculated?
   3. If yes, how should EMW's accumulation period actual costs be adjusted for its FAC?

B. Should the Commission require Evergy to conduct a full retirement study of its coal fleet using optimized capacity expansion software, which identifies the optimal retirement date for each of its coal-fired units?

[316] Ex. 56, Messamore, pp. 11-12.
[317] Ex. 56, Messamore, pp. 11-12.
[318] Tr. Vol. 8, p. 272.

Rate Base

Has Evergy met its burden of proof to permit recovery from ratepayers of capital and O&M costs proposed in the test year for Iatan Unit 1, Jeffrey Units 1-3, and La Cygne Units 1 and 2?

Decision:

Resource Planning

Sierra Club has suggested a finding of imprudence regarding the resource planning involved with coal-fired generating plant. Sierra Club proposes that coal plants should be retired more quickly than already planned. Staff, OPC and Evergy all disagree with Sierra Club's position for different reasons. Sierra Club's analysis over-simplifies the analysis required to make these decisions. Sierra Club's proposal does not account for the replacement of the capacity of the retired power plant; type of replacement capacity (baseload/dispatchable capacity) and its implications; and stranded costs of the retired plant. The standard to begin a prudency analysis is the raising of a serious doubt. The Commission finds that Sierra Club has not raised a serious doubt about Evergy's resource planning. The Commission does not find the reason for Sierra Club's request for a full retirement study of Evergy's coal units using optimized capacity expansion software persuasive, especially given that Evergy is already utilizing this tool.

Rate Base

Sierra Club's recommendation to disallow the costs of certain coal plants has overlooked two key factors in the retirement of utility generation. Sierra Club's analysis did not adequately address undepreciated investment and also fails to address the fact that these coal plants are not solely Evergy's to control and determine a retirement date. The standard to pursue a finding of imprudence is to raise a serious doubt about the

practice at issue. The Commission does not find that Sierra Club has raised a serious doubt regarding the prudence of Evergy's resource planning and therefore its spending on capital and O&M costs for Iatan Unit 1, Jeffrey Units 1-3, and La Cygne Units 1 and 2. The Commission finds that Evergy has met its burden of proof to permit recovery of capital and O&M costs proposed in the test year for Iatan Unit 1, Jeffrey Unites 1-3, and La Cygne Units 1 and 2.

STREETLIGHTING (EMW ONLY)

Findings of Fact:

267. The City of St. Joseph (St. Joseph) recommends revisions to Tariff Sheet No. 150 to permit a municipality to build streetlights as part of a public works project, or to have them built by a contractor as part of a city-approved development, and deem ownership of the streetlights to be in Evergy.[319]

268. The proposal of transferring ownership of streetlighting was offered by St. Joseph Light and Power Company (SJLP) as part of its municipal street lighting tariff.[320]

269. Historically, St. Joseph was able to require a developer build the streetlights and then have the utility take ownership of the streetlights (Developer Installed Option). Evergy's current practice charges the streetlighting fees directly to St. Joseph.[321]

270. St. Joseph was the only EMW customer to have the Developer Installed Option to the municipal streetlighting tariff.[322]

[319] Ex. 51, Lutz Rebuttal, p. 9.
[320] Ex. 51, Lutz Rebuttal, p. 10.
[323] Ex. 307, Marke Rebuttal, p. 23.
[322] Ex. 51, Lutz Rebuttal, p. 12.

271. To Evergy's best knowledge, the practice of allowing developer installed streetlighting in St. Joseph began through a memorandum of understanding that followed SJLP's purchase of the St. Joseph streetlighting system in the 1980s or early 1990s.[323]

272. Subsequently, SJLP and another electric utility, Missouri Public Service Company, merged under Aquila and then KCP&L Greater Missouri Operations Company, and in 2016 consolidated the various companies' streetlighting tariffs in File No. ER-2016-0156.[324]

273. The City of St. Joseph was a party to File No. ER-2016-0156.[325]

274. Provisions for the Developer Installed Option were not included in the 2016 consolidated streetlighting tariffs as the consolidation sought to end lighting options that were not suited for universal application across the service area.[326]

275. In a limited deployment, such as the city limits of St. Joseph with approximately 45 square miles, the Developer Installed Option was practical in that utility companies could travel to inspect a streetlight quickly and utility relationships with the small number of developers allowed some familiarity and interaction with the developers' streetlight installers to assist quality control.[327]

276. Beginning in 2017, Evergy began a systematic conversion of its municipal street lighting to light emitting diode (LED) technology.[328]

277. In spring of 2018, St. Joseph lifted a 12-year suspension on city-initiated streetlight expansion.[329]

[323] Ex. 51, Lutz Rebuttal, p. 10.
[324] Ex. 51, Lutz Rebuttal, p. 10.
[325] Order Granting Intervention, issued March 21, 2016, File No. ER-2016-0156.
[326] Ex. 51, Lutz Rebuttal, pp. 10-11.
[327] Ex. 52, Lutz Surrebuttal, p. 33.
[328] Ex. 117, Lutz Direct, p. 52.
[329] Ex. 51, Lutz Rebuttal, p. 11.

278. Also in spring of 2018, EMW completed a conversion of all non-decorative streetlighting fixtures to LED technology.[330]

279. St Joseph has approximately 6,500 LED lighting type streetlights, plus a few older light types such as high pressure sodium or mercury vapor.[331]

280. As a rule of thumb, and subject to change due to location and other conditions, it costs Evergy roughly $3,800 to purchase and install a metal street light pole.[332]

281. The LED conversion and the lifting of the 12-year suspension brought to attention the change in EMW's streetlighting tariff, which resulted in multiple meetings between Evergy and St. Joseph, resulting in a letter sent to St. Joseph in December of 2018.[333]

282. In 2019 St. Joseph attempted to invoke the terms of the Developer Installed Option contained in the pre-2016 streetlighting tariff, which had provided for transferring ownership of streetlighting to Evergy, which resulted in additional meetings and a letter sent to St. Joseph in April 2020.[334]

283. The letter sent in April 2020 presented two alternatives to St. Joseph: 1) let Evergy build all the new streetlights; or 2) St. Joseph build the new streetlights itself and also own and maintain them.[335]

[330] Ex. 51, Lutz Rebuttal, p. 11.
[331] Tr. Vol. pp. 881-882.
[332] Tr. Vol. 12, p. 872; and pp. 880-881.
[333] Ex. 51, Lutz Rebuttal, p. 11.
[334] Ex. 51, Lutz Rebuttal, pp. 11-12.
[335] Ex. 850, Carter Direct, p. 3; Ex. 854 is a copy of the April 2020 letter.

284. A maintenance only rate in Tariff Sheet No. 151 attempts to remove the equipment ownership aspects and provide only maintenance and energy cost elements.[336]

285. Tariff Sheet No. 150.1 describes the additional optional charges applicable only to streetlights owned by EMW to recover the costs associated with the installation of the elements listed in 4.1 to 4.5 of the tariff sheet.[337]

286. City owned streetlights would not be subject to the charges in Tariff Sheet No. 150.[338]

287. St. Joseph can install and own streetlights, but that would require adding liability insurance and maintenance costs to the city budget.[339]

288. Breakaway bases are special bases for streetlight poles designed to fragment if hit by a vehicle. It is used as the base for a metal light pole.[340]

289. Undergrounding refers to how the electricity is extended to the light pole, by installing the electric distribution line underground rather than by overhead wire. Depending on soil conditions around the new streetlight, rock may need to be removed or other specialized trenching or boring be employed to extend electricity to the streetlight pole underground.[341]

290. The purpose of charges for underground conductors and breakaway bases is to cover the ongoing maintenance of these items; the costs are not accounted for elsewhere in the streetlighting tariff.[342]

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[336] Tr. Vol. 12, p. 884.
[337] Tr. Vol. 12, pp. 886-887.
[338] Tr. Vol. 12, pp. 886-887.
[339] Ex. 850, Carter Direct, pp. 3-4.
[340] Ex. 851, Carter Surrebuttal, pp. 6-7.
[341] Ex. 851, Carter Surrebuttal, p. 7.
[342] Ex. 51, Lutz Rebuttal, p. 12.

291. Where the streetlighting tariff refers to charges added for new, basic installations, it does not mean a new streetlight, rather it establishes the conditions of new installation versus a retrofit. The designation of new does not limit EMW's charges to installation only, it is an ongoing monthly charge for continued maintenance.[343]

292. In order to re-adopt the Developer Installed Option, EMW would need to be prepared to support all municipalities wishing to utilize the option.[344]

293. St. Joseph testified that the ability to require developers to install streetlighting at the developer's cost is a policy decision that should be left to local municipalities, but that it would be content with some other designated limitation to reduce the availability of the tariff to just itself or a small group.[345]

294. St. Joseph argues that the capital costs of streetlights should be borne by the developers who are causing the expansion, and not the city operating budget.[346]

295. St. Joseph distinguishes the capital costs of the city versus the operating costs.[347] It is this change in the city's budget – paying for the streetlights from its capital costs to its operating costs that is the cause of St. Joseph's concern.[348]

296. St. Joseph argues that the change to the streetlighting tariff removed the city's ability to allocate capital expense to developers, and instead burdened the city with significant infrastructure cost.[349]

[343] Tr. Vol. 12, pp. 871-872.
[344] Ex. 51, Lutz Rebuttal, p. 12.
[345] Ex. 851, Carter Surrebuttal, pp. 3-4.
[346] Ex. 850, Carter Direct, p. 4.
[347] Ex. 851, Carter Surrebuttal, p. 4.
[348] Ex. 851, Carter Surrebuttal, pp. 4-5.
[349] Ex. 851, Carter Surrebuttal, p. 2.

297. St. Joseph argued that it is unfair for it to have to pay ongoing monthly charges related to undergrounding, breakaway bases, rock removal, or other specialized trenching/boring.[350]

298. Sixty-one streetlights have been identified as being transferred from St. Joseph to EMW in 2017.[351]

299. Of the 61 identified streetlights, 31 have breakaway bases.[352]

300. All 61 identified streetlights require undergrounding.[353]

301. The 61 streetlights are in EMW's rate base valued at zero dollars.[354]

Conclusions of Law:

DD. Streetlighting Tariff Sheet No. 151 contains no restriction on third parties' ability to install streetlights.

EE. Section 393.130.3 prohibits an electrical corporation from granting undue or unreasonable preference to select ratepayers and locales.

Issues Presented by the Parties:

> A. Should language be added to EMW's Municipal Street Lighting Service Tariff providing that streetlights installed by a city contractor or a city-approved developer shall be deemed to be owned by Evergy, after inspection and approval by the Company, and shall not be subject to additional installation or structure charges?
>
> B. Should language be added to EMW's Municipal Street Lighting Service Tariff providing that no "Optional Equipment" charges in Section 4.0 or 5.0 of Municipal Street Lighting Service Tariff will be charged to streetlight facilities which are deemed to be owned by the Company and installed by a city or its contractor, or by a developer of a city-approved development?

[350] Ex. 850, Carter Direct, pp. 6-7.
[351] Ex. 850, Carter Direct, p. 7.
[352] Tr. Vol. 12, p. 867.
[353] Tr. Vol. 12, p. 867.
[354] Tr. Vol. 12, p. 873.

C. Should the Company be required to remove from its rate base streetlights that were installed by city contractors or city-approved developers?

D. Should the Company be required not to charge the City of St. Joseph for breakaway bases, undergrounding and other "Optional Equipment" charges under Sections 4.0 and 5.0 of the tariff for streetlights that were installed by city contractors or city-approved developers?

Decision:

The Commission is sympathetic to the position of St. Joseph. It had a program whereby the city accumulated street lights, but did not have to pay to purchase and install them as they were paid for by the developer. Under the previous tariff of transferring ownership of streetlighting, the city streetlights also received ongoing maintenance at no cost to the city.

Such a program, however, is not suited for universal application across the EMW service area. The Developer Installed Option provisions of the streetlighting tariff began with a memorandum of understanding between EMW's predecessor and St. Joseph when St. Joseph Light and Power was acquired by Aquila. It is from this arrangement that the original tariff provisions were created. No other city ever participated in the Developer Installed Option.

When the streetlighting tariffs were consolidated in File No. ER-2016-0156, the Developer Installed Option was removed as it was not suited for universal application across the service territory. In arguing for the revival of Developer Installed Option, St. Joseph argued that it would accept verbiage which limited the program's availability within the service territory. In essence, St. Joseph requested that the Commission order EMW to offer the Developer Installed Option to everyone, or just to St. Joseph.

By statute, tariffs are required to be non-discriminatory. St. Joseph first requests that the Developer Installed Option would be available to everyone. This argument fails

due to the cost and involvement of offering such a streetlight ownership transfer program across the service territory. EMW's response in sum is that transferring ownership and maintenance of approximately 6,500 streetlights in a city of 45 square miles is achievable, but only due to the relatively small area. If the Developer Installed Option would be reinstated and available to all customers; the costs, personnel needed, and lack of current compliance standards makes enactment of the tariff provisions unreasonable.

St. Joseph argued that the Developer Installed Option could be limited to certain city or county classifications, or geographic identifiers. St. Joseph did not offer any evidence that there was a difference in the provision of street lighting service for St. Joseph's streetlights or in the provision of service of cities of a certain size or within a county of a certain designation as compared to other customers taking service under the streetlighting tariff such that the preference could be justified. The Developer Installed Option, as recommended by St. Joseph, is not appropriate due to the high cost associated with offering it across EMW's service area. Additionally, there is no evidence to support a finding that limiting the availability of the streetlight transfer of ownership provisions to only St. Joseph or other similarly situated cities would be justified.

St. Joseph also recommended that the streetlights it has already transferred ownership of be removed from EMW's rate base. EMW credibly testified that the transferred streetlights were in rate base for the purpose of tracking, but that all transferred streetlights were entered at a valuation of zero dollars. The Commission does not find St. Joseph's recommendation reasonable as the tracking is useful, and EMW is not earning a return on the transferred streetlights.

Lastly, St. Joseph recommended that it be exempted from having to pay for the continuing maintenance of the streetlights it transferred, specifically mentioning the

undergrounding and breakaway bases. This recommendation fails for the reason that the charges it opposes are tied to the ongoing maintenance of the streetlights. Even though transferred by St. Joseph to EMW, St. Joseph must still pay the monthly charges for EMW-owned streetlights under the terms of the tariff. Those monthly charges include energy and, pertinent to this subissue, maintenance. If St. Joseph desires to pay EMW only for energy and not for maintenance, then Tariff Sheet No. 151 details the energy charges for streetlights not owned or maintained by EMW. However, streetlights not owned or maintained by Evergy will be the responsibility of the streetlight owners, which is the situation that St. Joseph finds objectionable. The Commission does not find reasonable the recommendation of St. Joseph to be exempt from certain streetlighting charges addressing ongoing maintenance due to a prior transfer of ownership of the streetlights.

CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT HYDRO PURCHASED POWER AGREEMENT

Findings of Fact:

302. EMM entered into a hydro purchased power agreement with Central Nebraska Public Power and Irrigation District ("the Hydro PPA") to meet the Kansas Renewable Energy Standard.[355]

303. The Company's response to a discovery request in File No. ER-2018-0145 provides a power point presentation that provides information related to its justification for entering into the Hydro PPA contract.[356]

[355] Ex. 302, Mantle Rebuttal, p. 25; Tr. Vol 13, pp. 945-946.
[356] Ex. 336, Surrebuttal Testimony of Lena Mantle in ER-2018-0145, Schedule LMM-S-4C.

304. The Hydro PPA contract is effective from January 1, 2014, through December 31, 2023.[357]

305. The Hydro PPA contract has been serving customers in both Missouri and Kansas.[358]

306. Since the effective dates of rates from File No. ER-2018-0145, EMW alleges that the Hydro PPA has been included in base energy rates but has been excluded from the ongoing FAC Fuel Adjustment Rate ("FAR") filings.[359]

307. The Hydro PPA cannot be used to meet the Missouri Renewable Energy Standard because the three plants are accredited at 18 MW each and the Missouri statute requires plants to be rated at 10 MW or less to qualify for inclusion in meeting the Missouri Renewable Energy Standard.[360]

308. The Hydro PPA's capacity is not needed for EMM to meet resource adequacy requirements of SPP.[361]

309. The Hydro PPA's energy is not needed to meet customer load in Missouri.[362]

310. Staff argues that there is no benefit to Missouri customers just by being served; if the costs are exceeding the revenues, there is no benefit.[363]

311. OPC testified that there are no benefits to Missouri customers based on the Hydro PPA.[364]

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[357] Tr. Vol. 13, p. 951.
[358] Tr. Vol. 13, pp. 954-955.
[359] Ex. 66, Nunn Surrebuttal, p. 7.
[360] Ex. 303, Mantle Surrebuttal, p. 6; *see also* Tr. Vol. 13, p. 986, stating the generators are noncompliant with the Missouri limit.
[361] Ex. 303, Mantle Surrebuttal, p. 6.
[362] Tr. Vol. 13, p. 961, and pp. 986-987.
[363] Tr. Vol. 13, p. 960.
[364] Tr. Vol. 13, pp. 986-987.

312. Staff argues that there should be no recovery for the energy used to serve Missouri customers, and that Evergy can choose to serve Missouri customers without the Hydro PPA.[365]

313. Staff witness Shawn Lange, P.E., modeled EMM's generation and load requirements, and determined that, as modeled by Staff, EMM's generation exceeds its total load from Kansas and Missouri by approximately 6 million MWh annually.[366]

314. The Hydro PPA was modeled by Staff at providing 300,000 MWh annually.[367]

315. The modeled costs for the Hydro PPA were in excess of the revenues that were modeled.[368]

316. OPC testified to reviewing the test-year time period, and found that the costs of the Hydro PPA exceeded revenues for every month of the test-year period.[369]

317. There are instances where EMM would not be able to dispatch all 21 million MWh and would need to purchase power from SPP to meet its system load.[370]

318. EMM's generation is dispatched by the SPP.[371]

Conclusions of Law:

FF. The United States Supreme Court has stated:

> The filed rate doctrine also precludes a regulated utility from collecting any rates other than those properly filed with the appropriate regulatory agency. This aspect of the filed rate doctrine constitutes a rule against retroactive ratemaking or retroactive rate alteration. In its discussion of the doctrine, the [Court] explains that it explicitly prohibits an entity from "imposing a rate increase for gas already sold," and states, in a footnote, that an entity "may

[365] Tr. Vol. 13, p. 963.
[366] Tr. Vol. 13, pp. 974-976; Ex. 335C.
[367] Tr. Vol. 13, p. 977.
[368] Tr. Vol. 13, p. 983.
[369] Tr. Vol. 13, pp. 987-988, and 990.
[370] Tr. Vol. 13, p. 981.
[371] Tr. Vol. 13, p. 982.

not impose a retroactive rate alteration and, in particular, may not order reparations.[372]

Issues Presented by the Parties:

How should the net cost of the Central Nebraska Public Power and Irrigation District ("CNPPID") hydro purchased power agreement ("PPA") be treated?

1. Should a normalized cost be included in the calculation of the fuel and purchased power costs of Evergy Metro's revenue requirement?

2. Should a normalized cost be included in the Evergy Metro fuel adjustment clause ("FAC") base factor calculation?

3. Should the actual CNPPID hydro PPA costs be included in Evergy Metro's actual accumulation period FAC costs?[373]

Decision:

Evergy argues that the Hydro PPA serves Missouri customers and as such is used and useful. Although used, evidence shows it is not needed to meet Missouri customer load, its costs have exceeded revenues in every month of the current rate case test year, and thus, it is not useful to Missouri customers or economic.

Evergy also argues that the Hydro PPA was included in the base energy rate in the previous rate case and that the practice should be extended in this rate case. Underlying this argument are the terms of a settlement agreement from EMM's same previous rate case, File No. ER-2018-0145. The parties have disagreed about the inclusion, or exclusion, of the Hydro PPA in the settlement, and whether the settlement only dictated exclusion of the Hydro PPA from recovery under the FAC, or excluded the Hydro PPA from recovery in the base energy rate as well. The Commission does not reach a decision on what was or was not involved in that settlement, nor is it permitted to

[372] *State ex rel. Associated Natural Gas Co. v. Public Service Comm'n*, 954 S.W.2d 520, 531 (Mo. App. W.D. 1997) (internal citations omitted).
[373] Questions edited due to overlapping issues.

make adjustments even if the Hydro PPA was previously included in the base energy rate in error. The Commission's decision is based on the fact that the Hydro PPA's usefulness was not shown during the test-year. Moreover, the initial ten-year term of the Hydro PPA contract ends in December 31, 2023. The Hydro PPA does not provide benefits to Missouri customers and therefore will be excluded from recovery from Missouri customers.

Conclusion:

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

Except as otherwise set out in the body of this order, the Commission finds that EMM and EMW have met their burden of proof to show that an increased rate for each is just and reasonable. Thus, the Commission concludes, based upon its review of the whole record that rates approved as a result of this order support the provision of safe and adequate service. The revenue requirement authorized by the Commission is no more than what is sufficient to keep EMM's and EMW's utility plant in proper repair for effective public service and provide to Evergy'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.[374] To allow Evergy the earliest

[374] Section 386.490.2, RSMo.

opportunity to implement the approved rates, the Commission finds it reasonable to make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. The tariff sheets submitted on January 7, 2022, by EMM, and assigned Tracking Nos. YE-2022-0200 and YE-2022-0201 are rejected.

2. EMM is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order and the *Order Approving Four Partial Stipulations and Agreements*, issued September 22, 2022.

3. The tariff sheets submitted on January 7, 2022, by EMW, and assigned Tracking No. YE-2022-0202 are rejected.

4. EMW is authorized to file tariff sheets sufficient to recover revenues approved in compliance with this order and the *Order Approving Four Partial Stipulations and Agreements*, issued September 22, 2022.

5. The retirement of Sibley was prudent.

6. All determinations regarding the Sibley AAO are as set forth in the body of this order.

7. AMI-SD meters installed for the three reasons of (1) exchange of AMI meter for AMI-SD meter; (2) exchange of AMI meter for an AMI-SD meter due to customer arrears; and (3) unknown reasons are disallowed from recovery.

8. Fifty percent of the cost of the consultant fees associated with Subscription Pricing are disallowed from recovery.

9. Residential rates for Evergy are authorized as follows:

   a. Evergy's 2-period TOU proposed rate will be the default rate beginning October 1, 2023. The 2-period TOU rate will be phased in by

appropriate customer group from October 1, 2023, through December 31, 2023, and such phase-in shall be in coordination with the start of each customer group's billing cycle;

b. Staff's proposed low-differential rate is approved as an opt-in rate, without a lead-in time;

c. Evergy's additional TOU rate proposals are authorized on an opt-in basis, without a lead-in time.

d. Staff's low differential TOU will be the default rate for the net metering customers.

e. Evergy's Residential General Use rate will be the default rate for non-AMI metered residential customers.

f. The customer charge for all single-meter residential customers shall be $12.00. The customer charge for an additional residential meter shall be $3.25.

Evergy shall eliminate the identified residential rate codes and transition customers to the identified existing codes as discussed in the body of this order. Additionally, Evergy shall implement a program to engage and educate customers in the approximately ten-month lead-in time until its tariff provisions regarding the 2-period TOU rate as the default rate for residential customers becomes effective.

10. Evergy is authorized to track the education and outreach costs associated with TOU rate implementation for consideration and possible recovery in a future rate case.

11. Evergy shall submit in this file quarterly reports detailing the types and amounts of education and outreach expenses deferred with the first report due ninety days from the effective date of this order.

12. The Commission will open a new File Number to establish a forum allowing collaboration among stakeholders regarding the TOU education and implementation plans approved herein.

13. Non-residential rates for Evergy are authorized in the form of Evergy's proposed Time-Related Pricing rate on an opt-in bases, seasonal alignment matching EMM to EMW, and code consolidation and elimination of select end use rates.

14. Evergy shall host a meeting with interested stakeholders related to its rate modernization plan within 180 days of the effective date of Evergy's tariffs filed in compliance with this order.

15. Sierra Club's allegation of imprudence regarding resource planning involving coal plants is denied for lack of raising a serious doubt as to the prudence of existing resource planning.

16. Sierra Club's allegation of imprudence regarding Evergy's test-year spending on capital and O&M costs for Iatan Unit 1, Jeffrey Units 1-3, and La Cygne Units 1 and 2 is denied for lack of raising a serious doubt as to the prudence of its test-year spending for the above listed coal-fired generation plants.

17. St. Joseph's request to add language to EMW's streetlight tariff related to the Developer Installed Option is denied.

18. St. Joseph's request that the streetlights it has already transferred ownership of be removed from EMW's rate base is denied.

19. St. Joseph's request that it be exempted from having to pay for the continuing maintenance of the streetlights it already transferred to EMW is denied.

20. The Hydro PPA is disallowed from recovery as it is not used and useful to Missouri customers.

21. This *Amended Report and Order* will become effective on December 18, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).
Holsman, C., dissents.

Hatcher, Senior Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Structural Glass Systems, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2023-0143**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER DENYING MOTION TO DISMISS

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally
§6. Weight, effect and sufficiency
§24. Procedures, evidence and proof
§25. Pleadings and exhibits
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.

§6. Weight, effect and sufficiency
§25. Pleadings and exhibits
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments.

§6. Weight, effect and sufficiency
§25. Pleadings and exhibits
In ruling on a motion to dismiss a complaint for failure to state a cause of action, complaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.

§6. Weight, effect and sufficiency
§25. Pleadings and exhibits
The Commission held that the Complainant's characterization of gas service as "alleged" posed the question of whether the gas service billed for was provided.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of December, 2022.

Structural Glass Systems, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	**File No. GC-2023-0143**
	)	
Spire Missouri, Inc. d/b/a Spire	)	
	)	
Respondent.	)	

ORDER DENYING MOTION TO DISMISS

Issue Date: December 8, 2022 Effective Date: December 8, 2022

Structural Glass Systems, Inc. (SGS) filed a complaint against Spire Missouri, Inc. d/b/a Spire (Spire) on October 25, 2022. The complaint alleges that Spire's installation of defective metering equipment resulted in Spire's issuing a bill to collect an undercharge of $7,822.66 that cannot be billed or assessed to SGS, that the bill resulted from Spire's negligence, and that Spire's negligence has caused damage to SGS in the form of the bill for the alleged gas service and consequential damages. Spire filed a motion to dismiss the complaint on November 23, 2022. SGS responded in opposition to the motion to dismiss on November 25, 2022.

Spire's motion to dismiss argues that SGS has failed to allege facts in its complaint that would support a conclusion that Spire has violated any law, rule, or Commission approved tariff, or facts sufficient to support a finding of negligence; and that SGS has failed to allege facts giving rise to a claim for consequential damages. Spire argues that

even if it inadvertently installed metering hardware that resulted in an incorrect reading of gas usage, its re-billing to collect for actual gas service provided is not only authorized, but required in order to avoid any rate discrimination.

In its response, SGS asserts that its complaint is sufficient to state a claim because it alleges that Spire is billing it for gas service which was not provided, in that the language of the complaint states: ". . . Respondents present charge for natural gas of $7,822.66 resulted from an "under charge" for natural gas service allegedly provided to Complainant . . ." SGS argues that its characterization of gas service as "alleged" poses the question of whether the gas service billed for was provided. Additionally, SGS indicates in its complaint that the amount at issue is $7,822.66.

Spire's motion is a motion to dismiss the complaint for failure to state a cause of action. In ruling on that motion, the Commission merely considers the adequacy of the complaint.[1] It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.[2] Further, "[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition 'fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.'"[3] Section 386.390(1), RSMo (Supp. 2020), gives the Commission jurisdiction to hear complaints about:

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[1] *State ex rel. Laclede Gas Company v., Public Service Com'n of Missouri*, 392 S.W. 3d 24, 38 (Mo. App W.D. 2012).
[2] *Foremost Ins. Co. v. Public Service Com'n of Missouri,* 985 S.W. 2d 793, 796 (Mo. App. W.D. 1998).
[3] *State ex rel. Chicago B. & Q. R. Co. v. Public Service Commission,* 334 S.W.2d 54, 58 (Mo. 1960), quoting, *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission,* 308 Mo. 359, 372, 272 S.W. 957, 960 (Mo. 1925).

> any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission; …

After examining SGS's complaint in light of the guiding legal standard, the Commission finds that the complaint is sufficient to state a cause of action that can be addressed by the Commission. Specifically, the complaint alleges that Spire billed SGS for gas service that it did not provide and cannot be billed or assessed to it. The Commission cannot make any findings or reach any conclusions about the truth of those allegations at this time, but the allegations are sufficient to properly place this complaint within the Commission's jurisdiction.

On December 1, Spire filed its reply to SGS's response to its motion to dismiss, and on December 7, SGS filed its response to that reply. Neither filing enhanced the arguments presented in previous filings.

The Commission's order of October 26, 2022 directs Spire to file its answer to the complaint no later than November 25, 2022. Spire filed its motion to dismiss on November 23, 2022, but has not filed an answer to the complaint. The Commission will direct Spire to file its answer to the complaint.

The Commission finds that SGS's complaint states a cause of action against Spire, and Spire's motion to dismiss will be denied.

THE COMMISSION ORDERS THAT:

1. Spire's Motion to Dismiss is denied.

2. Spire shall file its answer to the complaint no later than December 19, 2022.

3. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Keeling, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for a Certificate of Convenience and Necessity and Associated with the Acquisition of Certain Water Assets	))))))	**File No. WA-2023-0003**

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY

WATER

§2. Certificate of convenience and necessity

The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of December 2022.

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., for a Certificate of Convenience and Necessity and Associated with the Acquisition of Certain Water Assets	))))))	**File No. WA-2023-0003**

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: December 8, 2022 Effective Date: December 18, 2022

On July 1, 2022,[1] Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed an application (Application) that seeks approval for the acquisition of, and a certificate of convenience and necessity (CCN) regarding Tan Tar A State Road, LLC (Tan Tar A), an unregulated existing water system located in Camden County. Confluence Rivers also requests waiver of the Commission's rule requiring sixty days' notice prior to filing an application. Confluence Rivers proposes to purchase substantially all of the water system assets of Tan Tar A. The subject assets consists mostly of underground piping in a residential neighborhood now known as Margaritaville Subdivision, formerly known as Tan-Tar-A Estates.

On July 6, Confluence Rivers filed an amendment to its application which corrected a statement in the Application regarding the existence of Tan Tar A's water rates. On August 8, Confluence Rivers filed a further amendment, substituting appendix F-C. The

[1] All dates refer to 2022.

substitute appendix is a corrected feasibility study, which is marked confidential and will not be discussed further. Under consideration by the Commission is the Application as amended on July 6 and August 8.

The Commission issued notice of the Application and set a deadline for the filing of applications to intervene, but no applications to intervene were received. The Commission also ordered Staff to file a recommendation. On November 18, Staff recommended the Commission grant Confluence Rivers the requested CCN subject to conditions related to record-keeping, notice, customer service, and the use of Confluence Rivers' currently ordered depreciation rates.

On November 21, Confluence Rivers filed an acceptance of Staff's recommendation, including a specific notation of acceptance of the recommended conditions. No other responses or objections to the Application or to Staff's recommendation were received. No party requested a hearing. The requirement for a hearing is met when the opportunity for a hearing has been provided.[2] Thus, the Commission will rule on the application.

Confluence Rivers is a certificated and regulated water and sewer utility providing service to customers in Missouri. Central States Water Resources, LLC is the parent company of Confluence Rivers. Confluence Rivers provides water service to approximately 4,300 customers and sewer service to approximately 4,400 customers across several counties.

Section 393.170, RSMo (Supp. 2021), in subsection 2, requires Confluence Rivers to have a CCN, which is granted by the Commission, prior to providing water service in

[2] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

the Margaritaville Subdivision service area. Subsection 393.170.3 requires that the Commission determine that the services are “necessary or convenient for the public service.” The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.[3] It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.[4] Subsection 393.170.3 permits the Commission to impose the conditions it deems reasonable and necessary for the grant of a CCN.

Confluence Rivers retained Flinn Engineering to evaluate the system. The Tan Tar A distribution system that is the subject of the Application was installed in 1970 and serves approximately 400 customers. Confluence Rivers has identified several improvements for the water system, but these plans are preliminary until after Confluence Rivers owns and operates the system. Tan Tar A does not presently charge for water service, and some customer information required research. Confluence Rivers stated that all customer information has now been identified. Confluence Rivers is acquiring this system through access to capital from its parent company.

Confluence Rivers proposes to apply its existing approved customer charge at its nearby Osage water system for the Tan Tar A service area. The rate would be a monthly flat rate charge of $24.76 for 5/8” meters. Confluence Rivers also proposes to utilize the rules governing water service currently found in its water tariff P.S.C. MO No. 24 (Osage).

[3] *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).
[4] *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

The Tan Tar A distribution system does not currently have any meters. Confluence Rivers is investigating the economics of installing individual meters, but no plans have been finalized.

The Commission may grant a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."[5] The Commission has articulated specific criteria when evaluating applications for utility CCNs as follows:

> (1) there must be a need for the service;
>
> (2) the applicant must be qualified to provide the proposed service;
>
> (3) the applicant must have the financial ability to provide the service;
>
> (4) the applicant's proposal must be economically feasible; and
>
> (5) the service must promote the public interest.[6]

These criteria are known as the Tartan Factors.[7]

There is a need for the service because the customers of Tan Tar A are already receiving water service and will continue to need that service. Confluence Rivers is qualified to provide the service as it is an existing water utility subject to the Commission's jurisdiction. Confluence Rivers has the financial ability to operate the system, as no external financing is needed and Confluence Rivers has demonstrated historically that it has adequate resources to operate utility systems it owns.

[5] Section 393.170.3, RSMo (Supp. 2021).
[6] *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.).
[7] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

The proposed transaction is economically feasible due to its being financially feasible, as well as Confluence Rivers' ability to draw resources from its parent company. The proposal promotes the public interest as demonstrated by positive findings in the first four Tartan Factors. Moreover, the customers will experience enhanced service with the proposed improvements to be made by Confluence Rivers.

The Commission finds that Confluence Rivers' ownership and operation of the Tan Tar A water system is necessary and convenient to the public service of the Margaritaville Subdivision customers. The Commission concludes that with the unopposed conditions proposed by Staff the factors for granting a CCN to Confluence Rivers are reasonable. The Commission will grant Confluence Rivers a CCN to provide water service within the proposed service area subject to the conditions in Staff's memorandum.

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

Finally, Confluence Rivers requested that this order be issued with a 10-day effective date to accommodate an end-of-the-year transaction due to tax, accounting, and future rate case considerations. No party objected to this request. The Commission finds the unopposed request reasonable, and will grant it. Due to Confluence Rivers' unopposed request and the economic and tax implications at stake, the Commission will make this order effective in less than 30 days.

THE COMMISSION ORDERS THAT:

1. Confluence Rivers' request for waiver from the 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D) is granted.

2. Confluence Rivers is granted authority to acquire substantially all of the water utility assets of Tan Tar A as described in the Application.

3. Upon closing, Confluence Rivers is granted a CCN to install, acquire, build, construct, own, operate, control, manage, and maintain a water system in the areas currently served by Tan Tar A and designated in the Application, subject to the conditions and requirements contained in Staff's recommendation, as follows:

a) Confluence Rivers' shall apply the rates and the rules governing water service currently found in Confluence Rivers' water tariff P.S.C. MO No. 24 (Osage);

b) Confluence Rivers shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges;

c) Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing;

d) If closing on the water system assets does not take place within thirty days following the effective date of this order, Confluence Rivers shall submit a status report within five days after this thirty-day period regarding the status of closing, and additional status reports within five days after each additional thirty day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur;

e) If Confluence Rivers determines that a transfer of the assets will not occur, then Confluence Rivers shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made. In such case, Confluence Rivers shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the service area in its water tariff, and rate and charges sheets applicable to customers in the service area in the water tariff;

f) Confluence Rivers shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;

g) Confluence Rivers shall adopt Confluence Rivers' current depreciation rates in regards to the acquired assets;

h) Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the water customers in the acquired area;

i) Confluence Rivers shall distribute to the customers in the acquired area an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty days of closing on the assets;

j) Confluence Rivers shall provide to the Customer Experience Department (CXD) Staff an example of its actual communication with the Tan Tar A customers regarding its acquisition and operations of the water,

and how customers may reach Confluence Rivers, within ten days after closing on the assets;

k) Confluence Rivers shall provide to the CXD Staff and the Manager of the Staff Water, Sewer and Steam Department a sample of five billing statements from the first three month's billing for the acquisition within ten (10) days of the billings;

l) Confluence Rivers shall file notice in this File No. outlining completion of the above-recommended training, customer communications, notifications and billing for the acquisition within ten days after such communications and notifications;

m) Confluence Rivers shall include the Tan Tar A water customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets; and,

n) Confluence Rivers shall file notice in this File No. once conditions a) through m) above have been completed.

4. Upon closing of the asset transfer, Confluence Rivers is authorized to begin providing service.

5. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

6. This order shall become effective on December 18, 2022.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Senior Regulatory Law Judge.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of Confluence Rivers Utility Operating Company, Inc., for Certificates of Convenience and Necessity to Provide Water and Sewer Service in an Area of Lincoln County, Missouri	)))))	**File No. WA-2023-0026**

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

CERTIFICATES

§21. Grant or refusal of certificate generally

In determining whether to grant a utility a certificate of convenience and necessity (CCN), the Commission has stated five criteria to guide its determination of whether granting the CCN is "necessary or convenient for the public service" under Section 393.170.3, RSMo (Supp. 2021): (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. *In re Tartan Energy Co.,* 3 Mo P.S.C. 173, 177 (1994).

§21. Grant or refusal of certificate generally

The Commission granted Confluence Rivers Utility Operating Company, Inc. a certificate of convenience and necessity to operate a water and sewer system for residential customers in Lincoln County, Missouri upon purchase of the system from Glenmeadows Water and Sewer LLC.

SEWER

§2. Certificate of convenience and necessity

The Commission granted Confluence Rivers Utility Operating Company, Inc. a certificate of convenience and necessity to operate a water and sewer system for residential customers in Lincoln County, Missouri upon purchase of the system from Glenmeadows Water and Sewer LLC.

§4. Transfer, lease and sale

The Commission granted permission for Confluence Rivers Utility Operating Company, Inc. to acquire substantially all of the water and sewer utility assets of Glenmeadows Water and Sewer LLC in Lincoln County, Missouri.

WATER

§2. Certificate of convenience and necessity

The Commission granted Confluence Rivers Utility Operating Company, Inc. a certificate of convenience and necessity to operate a water and sewer system for residential customers in Lincoln County, Missouri upon purchase of the system from Glenmeadows Water and Sewer LLC.

§4. Transfer, lease and sale

The Commission granted permission for Confluence Rivers Utility Operating Company, Inc. to acquire substantially all of the water and sewer utility assets of Glenmeadows Water and Sewer LLC in Lincoln County, Missouri.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of December, 2022.

In the Matter of Confluence Rivers Utility Operating Company, Inc., for Certificates of Convenience and Necessity to Provide Water and Sewer Service in an Area of Lincoln County, Missouri	)))))	**File No. WA-2023-0026**

ORDER APPROVING ACQUISITION OF ASSETS AND GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

Issue Date: December 8, 2022 Effective Date: December 18, 2022

Procedural History

On July 25, 2022,[1] Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) filed applications that sought permission and approval to acquire substantially all of the water and sewer utility assets currently owned by Glenmeadows Water and Sewer LLC (Glenmeadows) and for certificates of convenience and necessity (CCN) to construct, install, own, operate, maintain, control, and manage Glenmeadows' water and sewer systems, which are currently not regulated by the Commission. Glenmeadows provides water and sewer services to approximately 230 customers in a fully built-out subdivision in Lincoln County, Missouri.

Confluence Rivers' applications regarding the Glenmeadows water and sewer systems were assigned File No. WA-2023-0026 and File No. SA-2023-0027, respectively.

[1] Unless otherwise noted, all dates refer to the year 2022.

On July 28, the Commission consolidated the two cases and designated File No. WA-2023-0026 as the lead file number.

In its applications to the Commission, Confluence Rivers requested waiver of the 60-day notice of case filing requirement.[2]

The Commission issued notice and set a deadline for intervention requests, but received no requests to intervene. On November 10, the Staff of the Commission (Staff) filed its recommendation to approve the acquisition of the water and sewer systems and grant CCNs, subject to certain conditions. On November 18, Confluence Rivers filed a response to Staff's recommendation in which it stated that it had no objection to Staff's proposed conditions. The response also requested that, if its application were approved, that the Commission consider an effective date shorter than the 30-day period commonly ordered due to tax, accounting, and future rate case considerations.

On November 21, the Office of the Public Counsel (OPC) responded to the applications and Staff's recommendation. OPC stated that while it did not oppose the acquisition, it would oppose any requested acquisition premium, if Confluence Rivers should request one in a future rate case. Confluence Rivers replied to OPC's response, acknowledging OPC's position. The Commission makes no decision in this order regarding the recovery of an acquisition premium.

No party requested a hearing and the requirement for a hearing is met when the opportunity for a hearing has been provided.[3] Thus, the Commission will make a

[2] Commission Rule 20 CSR 4240-4.017(1).
[3] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

determination based on the verified applications, Staff recommendation, and the other responses.

Discussion

Confluence Rivers is a “water corporation,” a “sewer corporation,” and “public utility” as those terms are defined in Section 386.020, RSMo (Supp. 2021), and is subject to the jurisdiction of the Commission. Confluence Rivers currently provides water service to approximately 4,443 customers and sewer service to approximately 4,602 customers in service areas throughout Missouri. In recent years, Confluence Rivers has acquired several existing small water and sewer systems.

Glenmeadows is a limited liability company that provides water and sewer service to approximately 230 customers in the Glenmeadows subdivision near Moscow Mills in Lincoln County, Missouri. On February 25, Central States Water Resources, Inc. (CSWR) entered into a *Purchase and Sale Agreement* with Glenmeadows in which CSWR would purchase substantially all of the water and sewer system assets of Glenmeadows, then assign its rights under the agreement to Confluence Rivers at closing. Confluence Rivers is a subsidiary of CSWR.

Section 393.170, RSMo (Supp. 2021), in subsection 2, requires Confluence Rivers to have CCNs, which are granted by the Commission, prior to providing water or sewer service in the Glenmeadows subdivision service area. Subsection 393.170.3 requires that the Commission determine that the services are “necessary or convenient for the public service.” The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great

enough to amount to a necessity.[4] It is within the Commission's discretion to determine when the evidence indicates the public interest would be served by the award of the certificate.[5] Subsection 393.170.3 permits the Commission to impose the conditions it deems reasonable and necessary for the grant of a CCN.

Water System

The Glenmeadows water system consists of a single well, three 11,500 gallon hydropneumatic pressure tanks, and a water distribution system that consists of 1,880 feet of two-inch diameter water mains and 9,420 feet of six-inch diameter water mains. The water system components were installed in 2004 and 2005. The system is not disinfected.

The Missouri Department of Natural Resources (DNR) last inspected the Glenmeadows water system on November 15, 2019. DNR found the system to be in compliance with the Missouri Safe Drinking Water Law. Though it noted that the well appeared to be in good condition, DNR noted that the system does not have a backup well or emergency connection. DNR also noted that the well does not have a pressure gauge, drawdown gauge, or lightning protection, and the three tanks have peeling paint. In all, the DNR inspection report made seven recommendations for the water system.

On October 20, Staff inspected the water system and noted many of the same issues addressed in the DNR inspection report. Staff also noted that the well head was not locked, making it vulnerable to tampering.

[4] *State ex rel. Intercon Gas, Inc., v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. App. 1993), citing *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. 1973), citing *State ex rel. Transport Delivery Service v. Burton*, 317 S.W.2d 661 (Mo. App. 1958).
[5] *State ex rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo. App. 1975).

Confluence Rivers proposes to make the following investments for the water system: (1) install remote monitoring, (2) well house repairs and maintenance, (3) install backup generator, (4) electrical improvements, (5) building expansion for booster skid addition, (6) pressure transducer installation, (7) magnetic flow meter installation, (8) booster pump and control panel installation, (9) miscellaneous piping and valve replacement, (10) convert hydropneumatic tanks to ground storage, (11) paint tanks, and (12) installation of sodium hypochlorite dosing system.

Sewer System

The Glenmeadows sewer system consists of a mechanical plant that has the following components: flow equalization, extended aeration, aerated sludge holding tank, chlorination, dechlorination, and sludge. The design flow for the system is 80,000 gallons per day (gpd) and the actual flow is 37,000 gpd. The collection system consists of 12,342 feet of eight-inch PVC gravity pipe and 58 manholes. The sewer system components were installed in 2004 and 2005.

DNR last inspected the Glenmeadows sewer system on March 6-7, 2019. The inspection resulted in issuance of a Notice of Violation for (1) causing pollution to the waters of the state, (2) discharging sludge into the waters of the state, and (3) operating without a valid Missouri State Operating Permit (MSOP). Based on a reply by the system's chief operator to DNR that the sludge in the stream had been removed and disposed of properly and that their legal counsel was working on getting the facility back into compliance with a valid MSOP, DNR renewed Glenmeadows' permit, with an effective date of November 1, 2019, and an expiration date of December 31, 2023.

On October 20, Staff inspected the sewer system. Staff noted that, overall, the sewer system was poorly maintained and was in extremely poor condition. The grates that are over the flow equalization, extended aeration and aerated sludge holding tank were severely rusted, literally falling apart, and needed to be replaced immediately for safety reasons. Leaves and debris were clogging the skimmers in the clarifiers. The clarifiers were full of sludge and plants were growing in the clarifiers from the sludge build-up. Large amounts of sludge were found in the chlorine contact chamber. Staff also noted that the bar screen was in a hard to reach location and was completely clogged and covered with rags, debris, and disposable wipes. Staff observed that the sewer plant was discharging during their site visit and sludge was visible in the adjacent stream. There was no sign identifying the outfall, which was a violation of their DNR permit.

Confluence Rivers proposes to make the following investments for the sewer system: (1) install a flow meter at inlet or outfall with remote monitoring system; (2) install a new electrical distribution panel and a manual transfer switch to allow for the use of a portable generator for use in emergency situations; (3) replace the grating on top of the equalization tanks; (4) install foam insulation and roof tin panels for walls and ceiling in blower building; (5) replace airlifts that feed the plant with duplex grinder pump systems with Variable Frequency Drive (VFD) motors in each equalization tank; (6) increase the size of the air headers for the extended aeration, digester aeration, and pre-equalization processes; (7) install a new triplex blower system for extended aeration; (8) install new control panels with VFD motors for blowers; (9) add new density current baffles in the clarifiers; (10) replace existing chlorine disinfection system with a new UV disinfection system with necessary equipment; (11) create a GIS map of the sewer

system collection system; (12) for the sewer system collection system, install flow monitoring, perform smoke testing, perform video inspection at selected locations, evaluate systems and create GIS based maintenance priority list; and (13) address immediate non-compliance items like sludge being released in the discharging creek and no outfall identification.

Decision

The Commission may grant a water and sewer corporation a CCN to operate after determining that the construction and operation are "necessary or convenient for the public service."[6] The Commission has stated five criteria that it uses to determine necessity or convenience:

1. There must be a need for the service;
2. The applicant must be qualified to provide the service;
3. The applicant must have the financial ability to the provide the service;
4. The applicant's proposal must be economically feasible; and
5. The service must promote the public interest.[7]

On November 10, Staff filed its recommendation with an attached memorandum. The recommendation concludes that Confluence Rivers' applications satisfy these standards, which are often referred to as the "Tartan" criteria or factors.

In its applications, Confluence Rivers states that there is no other same or similar water or sewer services available in the area served by Glenmeadows. Staff concludes that the existing Glenmeadows customers have a current and future desire and need for water and sewer services. Staff advises that, as an existing water and sewer corporation

[6] Section 393.170.3, RSMo (Supp. 2021).
[7] *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994).

providing service to over 4,600 water customers and over 4,400 sewer customers, Confluence Rivers is qualified to provide the services.

Staff reports that Confluence Rivers has the financial capacity to acquire the water and sewer systems through access to capital from its parent company, CSWR. This purchase is being made with a capital infusion and as a result, the purchase does not have a negative impact on Confluence Rivers' capital structure or financial ratios.

Staff reports that Confluence Rivers anticipates no need for additional external financing to complete this acquisition. The feasibility of Confluence Rivers' providing water and sewer service in the acquired service area is also supported by Confluence Rivers demonstrating, over numerous years, that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expand existing systems, to plan and undertake scheduled capital improvements, and to timely respond and resolve emergency issues when such situations arise.

Staff reports that the Glenmeadows sewer system has not been properly operated and maintained. As owners of the Glenmeadows water and sewer systems, Confluence Rivers would make improvements to both systems and better serve those customers by providing safe and adequate service, thereby promoting the public interest.

The Commission finds that there is a need for water and sewer service in the Glenmeadows subdivision service area and Confluence Rivers is qualified to provide that service. The Commission finds that Confluence Rivers has the financial ability to acquire the Glenmeadows water and sewer systems and adequately operate them in the future and that it is economically feasible for Confluence Rivers to do so. The Commission

further finds that granting the CCNs with the reasonable and necessary conditions proposed by Staff will promote the public interest.

The Commission finds that Confluence Rivers' ownership and operation of the Glenmeadows water and sewer system is necessary and convenient to the public service of the Glenmeadows subdivision customers. Therefore, the Commission will grant Confluence Rivers CCNs for the service areas currently served by those systems. No objections to Staff's recommended conditions were received and the Commission finds that Staff's conditions are reasonable and necessary. Therefore, the Commission will grant the CCNs, subject to those conditions.

Confluence Rivers' applications also asked the Commission to waive the 60-day notice requirement in 20 CSR 4240-4.017(1). The Commission finds good cause exists for waiver based on Confluence Rivers' verified declaration that it had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing its applications. Further, the Commission finds it reasonable for this order to become effective in less than 30 days, as requested.

THE COMMISSION ORDERS THAT:

1. The 60-day notice of case filing requirement is waived for good cause found, pursuant to 20 CSR 4240-4.017(1)(D).

2. Confluence Rivers is granted permission to acquire substantially all of the water and sewer utility assets of Glenmeadows pursuant to a *Purchase and Sales Agreement* dated February 25, 2022, between Glenmeadows and CSWR.

3. Upon closing, Confluence Rivers is granted certificates of convenience and necessity to provide water and sewer service in the Glenmeadows service area, subject

to the conditions and requirements contained in Staff's recommendation, as set out below:

a. Confluence Rivers shall adopt the existing water and sewer rates for the Glenmeadows systems;

b. Confluence Rivers shall submit tariff sheets, to become effective before closing on the assets, to include a service area map, service area written description, rates and charges to be included in its tariffs P.S.C. MO No. 12 and 13, applicable to water and sewer service, respectively;

c. Confluence Rivers shall notify the Commission of closing on the assets within five days after such closing;

d. If closing on the water and sewer system assets does not take place within 30 days following the effective date of this Commission order, Confluence Rivers 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 Confluence Rivers determines that the transfer of the assets will not occur;

e. If Confluence Rivers determines that a transfer of the assets will not occur, Confluence Rivers shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and Confluence Rivers shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the Glenmeadows service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the Glenmeadows service area in both the water and sewer tariffs;

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

h. Confluence Rivers shall adopt the depreciation rates ordered for it in File Nos. WA-2013-0117 and SA-2013-0354 for the Glenmeadows assets;

i. Confluence Rivers shall provide training to its call center personnel regarding rates and rules applicable to the water and sewer[8] customers in the acquired area;

j. Confluence Rivers shall distribute to the Glenmeadows customers an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rules in 20 CSR 4240-13 within 30 days of closing on the assets;

k. Within ten days after closing on the assets, Confluence Rivers shall provide to Staff's Customer Experience Department (CXD Staff) an example of its actual communication with the Glenmeadows customers regarding its acquisition and operations of the water and sewer system assets,[9] and how customers may reach Confluence Rivers;

l. Confluence Rivers shall provide to the CXD Staff a sample of five billing statements from the first month's billing within 30 days of closing on the assets; and

m. Confluence Rivers shall file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing within ten days after such communications and notifications are completed.

4. Confluence Rivers is authorized to take other actions as may be deemed necessary and appropriate to consummate the transactions proposed in the applications.

5. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the CCNs to Confluence Rivers, including proposed expenditures related to the certificated service area as discussed in the body of this order, in any later proceeding.

6. This order shall become effective on December 18, 2022.

[8] The words "and sewer" have been inserted with the understanding that the phrase "water and sewer" was meant by Staff to be included in the condition.
[9] The words "and sewer system assets" have been inserted with the understanding that the phrase "water and sewer system assets" was meant by Staff to be included in the condition.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Seyer, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of 188 North Summit, LLC, and Seges Utility Company, LLC For Authority to Sell the Water System and Wastewater System Assets of Seges Mobile Home Park, LLC, to Seges Utility Company, LLC, and For a Certificate of Convenience and Necessity To Provide Water and Sewer Services	))))))))	**File No. WM-2023-0065**

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

WATER

§2. Certificate of convenience and necessity
§4. Transfer, lease and sale
§8. Jurisdiction and powers of the State Commission

A regulated utility must obtain the Commission's authorization before selling or transferring its assets

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of December 2022.

In the Matter of the Joint Application of 188 North Summit, LLC, and Seges Utility Company, LLC For Authority to Sell the Water System and Wastewater System Assets of Seges Mobile Home Park, LLC, to Seges Utility Company, LLC, and For a Certificate of Convenience and Necessity To Provide Water and Sewer Services	)))))))	**File No. WM-2023-0065**

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

Issue Date: December 8, 2022 Effective Date: January 7, 2023

On August 10, 2022, 188 North Summit, LLC ("188NS") and Seges Utility Company, LLC (Seges Utility Co.) (together, "Joint Applicants") filed joint applications (Applications) seeking authority to transfer ownership as well as approval for a certificate of convenience and necessity (CCN).[1] The Joint Applicants request authority for Seges Utility Co. to construct, install, own, operate, control, manage and maintain an existing water and wastewater system in Seges Mobile Home Park, located in Callaway County, Missouri. The Joint Applicants requested waiver of certain Commission rules related to providing the name of ten residents and a feasibility study. The Staff of the Commission (Staff) reported that the requested rule waiver regarding the names of ten residents was satisfied during Staff's investigation. Lastly, the Joint Applicants seek waiver of the 60-day notice of case filing requirement.

[1] The Commission's *Order Granting Motion to Consolidate*, issued September 16, 2022, consolidated separate water and sewer applications (see also File No. SM-2023-0066).

The Commission issued notice of the Applications and set a deadline for the filing of applications to intervene, but none were received. The Commission also ordered Staff to file a recommendation. On November 1, 2022, Staff recommended approval of the transfer of assets and the grant of CCNs subject to conditions related to record-keeping, notice, customer service, and the use of 188NS' depreciation schedule.

On November 11, 2022, the Joint Applicants filed an acceptance of Staff's recommendation, including a specific notation of acceptance of the recommended conditions. No other responses or objections to the Applications or to Staff's recommendation were received. No party requested a hearing. The requirement for a hearing is met when the opportunity for a hearing has been provided.[2] Thus, the Commission will rule on the application.

188NS seeks authority to sell and Seges Utility Co. seeks the permission to acquire the water and sewer assets 188NS uses to provide service. Additionally, Seges Utility Co. requests that Commission issue it CCNs regarding the systems. In the Applications, Seges Utility Co. states that it intends to acquire substantially all the water and sewer utility assets presently owned by 188NS for $1.00.

188NS and Seges Utility Co. are privately-held entities. 188NS is a certificated and regulated water and sewer utility providing service to customers of Seges Partners Mobile Home Park.[3] 188NS provides service to approximately 55 customers, which varies depending on park occupancy. Seges Mobile Home Park, LLC ("Seges MHP") purchased the mobile home park from 188NS in August 2022. Seges MHP assigned its rights

[2] *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).
[3] File No. WM-2018-0018, issued September 19, 2017.

regarding the water and sewer systems to Seges Utility Co. If the Applications are approved, Seges Utility Co. would become a certificated and regulated water and sewer utility under the jurisdiction of the Commission.

Staff conducted a routine site inspection on October 12, 2022, and confirmed that the water and sewer collection systems are in good working condition. The current operator of the systems, Environmental Management Solutions, LLC, will continue to perform engineering and regulatory duties. Seges Utility Co. proposes to adopt the rates, rules and regulations of 188NS' existing Commission-approved tariff.

As a regulated utility, 188NS must obtain the Commission's authorization before selling or transferring its assets.[4] In evaluating the proposed transfer of utility property, the Commission can only disapprove the transaction if it is detrimental to the public interest.[5]

Water and sewer service will continue subsequent to the transfer. The existing charges to customers will not change after the transfer. The company and personnel that are currently managing the systems will continue to do so after the transfer. Because of these reasons, the Commission finds that allowing 188NS to transfer its assets is not detrimental to the public interest.

The Commission may grant a water or sewer corporation a CCN to operate after determining that the construction and operation are either "necessary or convenient for the public service."[6] The Commission has articulated specific criteria to be used when evaluating applications for utility CCNs as follows: (1) there must be a need for the

[4] Section 393.190, RSMo (2016).
[5] *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393, 400 (Mo banc 1934).
[6] Section 393.170.3, RSMo (Supp. 2021).

service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.[7] These criteria are known as the Tartan Factors.[8]

There is a need for the service because the customers of 188NS are already receiving service and will continue to need that service. Additionally, 188NS has sold the mobile home park and no longer wishes to operate the water and sewer systems. Seges Utility Co. is qualified to provide the service as it will be employing the same company and personnel currently used to manage the systems after the transfer. Seges Utility Co. has the financial ability to operate the system, as the system has no debt and is not in need of major repairs. Additionally, Seges Utility Co. is able to request an increase in rates if necessary. The proposed transaction is economically feasible as there is no debt related to the capital structure, and Seges Utility Co. has a low risk financial profile. The proposal promotes the public interest as demonstrated by positive findings in the first four Tartan Factors. Moreover, there are no alternative providers in the area. Staff also states it is not opposed to the requested waiver of the Feasibility Study requirement citing the above facts.

The Commission finds that Seges Utility Co. possesses adequate technical, managerial, and financial capacity to operate the water and sewer systems it wishes to purchase from 188NS. The Commission concludes that the factors for granting a CCN to Seges Utility Co. have been satisfied and that with the conditions proposed by Staff, it is

[7] *Report and Order*, In re Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, for a Certificate of Convenience and Necessity, Case No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994), 1994 WL 762882, *3 (Mo. P.S.C.).
[8] *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

in the public interest for Seges Utility Co. to provide water and sewer service to the service areas currently served by 188NS. The Commission will authorize the transfer of assets, and will grant Seges Utility Co. the CCNs to provide water and sewer service within the proposed service areas subject to the conditions in Staff's memorandum.

The Joint Applicants also seek a waiver of the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1)(D). The Joint Applicants certify that they have had no communication with the office of the Commission regarding any substantive issue likely to be in this case during the preceding 150 days.

THE COMMISSION ORDERS THAT:

1. The Joint Applicant's request for waiver from the 60-day notice requirement of Commission rule 20 CSR 4240-4.017(1)(D) is granted.

2. 188NS is authorized to sell and transfer to Seges Utility Co. the assets identified in the Application.

3. Seges Utility Co. is granted CCNs to install, acquire, build, construct, own, operate, control, manage and maintain water and sewer systems in the areas currently served by 188NS.

4. Upon closing of the asset transfer, 188NS is authorized to cease providing service, and Seges Utility Co. is authorized to begin providing service.

5. Upon closing, the currently effective CCN of 188NS is cancelled.

6. Seges Utility Co. shall adopt the tariffs of 188NS by filing Adoption Notice tariff sheets, one each for the water tariff and the sewer tariff, with 30-day effective dates, within ten days after closing on the assets.

7. Seges Utility Co. shall provide service under the currently effective tariffs and rates of 188NS, P.S.C. Mo No. 1 and 2, on an interim basis until the Adoption Notice tariff sheets become effective.

8. Seges Utility Co. shall notify the Commission of closing on the assets within five days after such closing.

9. If closing on the water and sewer system assets does not take place within thirty days following the effective date of the Commission's order approving such, Seges Utility Co. shall submit a status report within five days after this thirty-day period regarding the status of closing, and additional status reports within five days after each additional thirty-day period, until closing takes place, or until Seges Utility Co. determines that the transfer of the assets will not occur.

10. If Seges Utility Co. determines that a transfer of the assets will not occur, it shall notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made. In such case, Seges Utility Co. shall submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the service area in its water and sewer tariffs, and rate and charges sheets applicable to customers in the service area in both the water and sewer tariffs.

11. Seges Utility Co. shall keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts.

12. Seges Utility Co. shall use 188NS' current water and sewer utility plant depreciation schedules as set out in Attachment F to Staff's recommendation.

13. Seges Utility Co. shall provide to the Customer Experience Department (CXD) Staff an example of its actual communication with customers regarding its acquisition and operations of the water system assets, and how customers may reach Seges, within ten days after closing on the assets.

14. Seges Utility Co. shall provide to the CXD Staff a sample of five billing statements from the first month's billing within thirty days after closing on the assets.

15. Seges Utility Co. shall file notice in this case outlining completion of the above recommended customer communications and notifications within ten days after such communications and notifications.

16. The Commission makes no finding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters in any later proceeding.

17. This order shall become effective on January 7, 2023.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Hatcher, Senior Regulatory Law Judge.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Grain Belt Express LLC for an Amendment to its Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and Associated Converter Station	)))))))	**File No. EA-2023-0017**

ORDER DENYING MOTION FOR SUMMARY DISPOSITION

EVIDENCE, PRACTICE AND PROCEDURE

§24. Procedures, evidence and proof

For the Commission to grant a motion for summary disposition, the Commission must determine: (1) there is no genuine dispute as to any material fact; (2) a party is entitled to relief as a matter of law; and (3) summary disposition is in the public interest. There is a factual dispute between the parties as to whether or not Grain Belt has abandoned the certificate of convenience and necessity (CCN) granted in File No. EA-2016-0358. There is also a dispute as to the legal implications of the alleged abandonment on an application for a new CCN if the Commission finds that an abandonment of the prior CCN did occur. These factual and legal disputes demonstrate that Missouri Landowners Alliance has not met its burden of proving that it is entitled to judgment as a matter of law.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of December, 2022.

In the Matter of the Application of Grain Belt Express LLC for an Amendment to its Certificate of Convenience and Necessity Authorizing it to Construct, Own, Operate, Control, Manage, and Maintain a High Voltage, Direct Current Transmission Line and Associated Converter Station	)))))))	**File No. EA-2023-0017**

ORDER DENYING MOTION FOR SUMMARY DISPOSITION

Issue Date: December 21, 2022 Effective Date: December 21, 2022

On August 24, 2022, Grain Belt Express LLC (Grain Belt) filed an application seeking an order amending its certificate of convenience and necessity (CCN) granted in File No. EA-2016-0358. The Commission directed notice and granted various requests to intervene. On October 28, 2022, the Missouri Landowners Alliance (MLA)[1] filed a motion requesting summary disposition of the application on the grounds that Grain Belt had abandoned its previous CCN by filing for an amendment to it. Grain Belt, Staff of the Commission (Staff), and Renew Missouri Advocates d/b/a Renew Missouri each filed timely responses in opposition to the motion.

For the Commission to grant a motion for summary disposition, the Commission must determine: (1) there is no genuine dispute as to any material fact; (2) a party is entitled to relief as a matter of law; and (3) summary disposition is in the public interest.[2]

[1] The motion was filed on behalf of the MLA, the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Norman Fishel, Gary and Carol Riedel, and Dustin Hudson. For convenience, this group was collectively referred to as "MLA" in the motion and will be referred to similarly in this order.
[2] Commission Rule 20 CSR 4240-2.117(1)(E).

MLA summarizes its theory for summary disposition stating that "once Grain Belt filed for major modifications to the CCN granted by the Commission in Case No. EA-2016-0358, it abandoned that CCN. Accordingly, Grain Belt no longer has a valid CCN which might be amended in this proceeding."[3]

Pursuant to its authority under Section 393.170, RSMo, the Commission granted a CCN to Grain Belt authorizing it to construct and operate its proposed 206-mile long HVDC transmission line across eight counties in northern Missouri.[4] That CCN is subject to several conditions, including that Grain Belt file an updated application and return to the Commission for further review and determination "if the design and engineering of the project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC's Application"[5] as filed in File No. EA-2016-0358.[6]

There is a factual dispute between the parties as to whether or not Grain Belt has abandoned the CCN granted in EA-2016-0358. There is also a dispute as to the legal implications of the alleged abandonment on an application for a new CCN if the Commission finds that an abandonment of the prior CCN did occur. These factual and legal disputes demonstrate that MLA has not met its burden of proving that it is entitled to judgment as a matter of law.

[3] Motion for Summary Disposition, (filed October 28, 2022), p. 1.
[4] File No. EA-2016-0358, *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*, Report and Order on Remand, (issued March 20, 2019) ("Report and Order on Remand"); Motion for Summary Disposition, paras. 1 and 2; and Grain Belt Express LLC's Response to Motion for Summary Disposition ("Response to Motion"), Attachment A, Response to MLA's Statement of Facts and State of Additional Facts ("Attachment A"), paras. 1 and 2.
[5] Report and Order on Remand, p. 52, Ordered Paragraph 6.
[6] Motion for Summary Disposition, para. 15; and Response to Motion, Attachment A, para. 15.

The Commission has authority under Section 393.170, RSMo, to grant a CCN in the new area requested and to grant a certificate that is different than the one that was previously granted. Grain Belt is entitled to have the Commission consider its application for a different CCN based on the facts and law surrounding that application after a hearing on any disputed facts. Thus, the Commission determines that MLA is not entitled to summary disposition as a matter of law. The Commission will deny MLA's motion for summary disposition.

THE COMMISSION ORDERS THAT:

1. The *Motion for Summary Disposition* filed by MLA is denied.

2. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

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

Dippell, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of Foxfire Utility Company for Authority to Transfer Certain Water and Sewer Assets Located in Stone County, Missouri to Ozark Clean Water Company, and in Connection Therewith, Certain Other Related Transactions	))))))	**File No. WM-2022-0186**

REPORT AND ORDER

EVIDENCE, PRACTICE AND PROCEDURE

§4. Presumption and burden of proof
§6. Weight, effect and sufficiency

Where no evidence was presented by the Office of the Public Counsel rebutting the purchaser's claim that it can readily meet its current or financial obligations at the existing utility rates, and without clear indication that the purchaser's rates will be excessive, or that the service provided to customer will decline due to the acquisition of the assets, the Commission held that the proposed transfer of assets is not detrimental to the public interest.

SERVICE

§1. Generally
§3. Obligation of the utility
§17. Duty to serve in general

In approving the transfer of a regulated utility's assets, the Commission must determine that the sale is "not detrimental to the public."

§11. Jurisdiction and powers of the State Commission
§15. Limitations on jurisdiction

The Commission must authorize the transfer of a regulated utility's assets unless the transfer is shown to be detrimental to the public.

WATER

§8. Jurisdiction and powers of the State Commission

The sale or transfer of a water corporation's assets requires authorization from the Commission.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Foxfire Utility Company for Authority to Transfer Certain Water and Sewer Assets Located in Stone County, Missouri to Ozark Clean Water Company, and in Connection Therewith, Certain Other Related Transactions	))))))	**File No. WM-2022-0186**

REPORT AND ORDER

Issue Date: December 21, 2022

Effective Date: January 4, 2023

APPEARANCES

Appearing For Foxfire Utility Company and Ozarks Clean Water Company:

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Jesse Craig, Attorney at Law,
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Appearing for Office of the Public Counsel:

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Appearing for the Staff of the Missouri Public Service Commission:

Scott Stacey, Staff Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102-0360.

Regulatory Law Judge: Ross Keeling

REPORT AND ORDER

Procedural History

On March 15, 2022[1], Foxfire Utility Company (Foxfire) filed verified applications pursuant to Section 393.190, RSMo 2016, 20 CSR 4240-2.060, and 10.105 seeking authority to sell its water and sewer assets to Ozark Clean Water Company (OCWC). Foxfire filed an application in File No. SM-2022-0187 concurrently with this case, and filed a motion to consolidate in both cases on the date the cases were filed. The Commission issued its order consolidating the files on March 16. OCWC also filed an application to intervene in both cases on March 15, and the Commission issued its order granting that application to intervene on April 8.

On June 28, Staff filed its recommendation, recommending that the Commission approve the transaction, subject to conditions. On July 8, Foxfire and OCWC filed their joint response to Staff's recommendation stating that they do not object to Staff's five conditions, and requested that the Commission issue an order approving the sale of Foxfire's water and sewer assets to OCWC.

The Office of the Public Counsel (OPC) responded to Staff's recommendation on July 8, objecting to the transaction, and stating that the approval of the transfer at the proposed price would be detrimental to the public interest because OCWC would be required to repay the $1,195,548 acquisition premium over the next twenty years. OPC contended the Foxfire customers are still under the protection of the Commission and

[1] All dates refer to 2022 unless otherwise specified.

urged the Commission to deny the requested transfer of assets. An evidentiary hearing was held on October 25 at 9:00 a.m.

The parties jointly presented two issues to be determined by the Commission concerning Foxfire's application for approval of the sale of its assets to OCWC.

1. **Should the Commission find that the sale or transfer of Foxfire Utility Company's (a public utility) water and waste water assets to Ozarks Clean Water Company (a nonprofit sewer company under Sections 393.825-393.861, RSMo, and a nonprofit water company under Sections 393.900-393.954, RSMo) is not detrimental to the public interest, and approve the transaction?**

2. **If the Commission grants approval of the transaction, what conditions, if any, should the Commission impose on such approval?**

At the evidentiary hearing the Commission heard the testimony of four witnesses and received nine exhibits onto the record. Garah F. (Rick) Helms (Helms), President of Foxfire, and David Casaletto (Casaletto), President of the Board of Directors of OCWC, testified on behalf of Foxfire and OCWC, who presented their evidence jointly. Jarrod Robertson (Robertson), senior research data analyst with the Water and Sewer and Steam Department of the Commission, and Keith Foster (Foster), utility regulatory auditor supervisor for the Commission, testified on behalf of Staff. OPC offered no witnesses.

Foxfire and OCWC, Staff, and OPC all filed post-hearing briefs. On November 30, the case was deemed submitted for the Commission's determination pursuant to Commission Rule 20 CSR 4240-2.150(1), which provides that "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."

Findings of Fact

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, rather that the omitted material was not dispositive of this decision. Any finding of fact reflecting that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.[2]

1. Foxfire is a Missouri corporation, active and in good standing with the Missouri Secretary of State, with its principal office and place of business at 3478 Smyrna Road, Rogersville, Missouri 65742.[3]

2. Foxfire currently provides water and sewer service to approximately 258 billed locations within the corporate limits of the Village of Indian Point in Stone County, Missouri, pursuant to certificates of convenience and necessity (CCN) granted by the Commission in Case No. WA-95-31.[4]

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[2] An administrative agency, as fact finder, also receives deference when choosing between conflicting evidence. State ex rel. Missouri Office of Public Counsel v. Public Service Comm'n of State, 293 S.W.3d 63, 80 (Mo. App. S.D. 2009). With respect to the appellate standard for reviewing Commission decisions, this case stated, further:

> "[I]f substantial evidence supports either of two conflicting factual conclusions, '[we are] bound by the findings of the administrative tribunal.' [citation omitted] The determination of witness credibility is a subject best left to the Commission, 'which is free to believe none, part, or all of [a witness's] testimony.' [citations omitted] We will not re-weigh the evidence presented to the Commission. [citation omitted]."

[3] Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, p. 6 of 20.

[4] Ex 2, Helms Direct, p. 3; Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, p. 7 of 20.

3. Helms is the Director and President of Foxfire. Helms is also the Trustee of the Rick and Janet Helms Revocable Trust dated 8/29/2014, which holds 100% of the shares of Foxfire.[5]

4. Helms was on the board of OCWC until he resigned in August of 2019.[6]

5. Helms recused himself from OCWC's July 15, 2019, board meeting in which the acquisition of Foxfire was first discussed, and resigned from OCWC's board of directors in August of 2019, before the December 31, 2019, vote to purchase Foxfire's assets.[7]

6. The Foxfire systems are in very good condition. There is no known need for repairs or immediate investment in the systems and there has been no deferred maintenance.[8]

7. OCWC is a Missouri 501(c)(3) water and sewer corporation that was formed in March of 2004 for the specific purpose of owning and operating individual and clustered wastewater systems. OCWC was formed in accordance with sections 393.825 to 393.861, RSMO, and is a not-for-profit corporation with voluntary membership. Membership is gained by applying for and receiving services from OCWC.[9]

8. OCWC currently provides water and sewer service to 2,380 locations, consisting of 1,860 sewer connections, 300 water only and 220 water and sewer connections at the same property, all provided through 9 permitted and 4 non-permitted

[5] Ex. 1, Helms Direct, p. 1.
[6] Ex. 1, Helms Direct. p. 7.
[7] Id.
[8] Ex. 1, Helms Direct, p. 6
[9] Ex. 100, Casaletto Direct, p. 4.

water systems, 19 permitted sewer systems, 1 sewer treatment system, 2 sewer collection systems, and 1 interceptor sewer that does not require permits.[10]

9. OCWC's financial structure is layered to address multiple improvement and maintenance plans for all its properties. OCWC rates include operation, maintenance, administration, overhead, and reserve for repair. Currently, OCWC's Board of Directors has established a reserve account funded at 75% of its annual operation and maintenance budget.[11]

10. Casaletto is the President of the OCWC Board of Directors.[12]

11. Neither Casaletto, nor any board members, have ever received any compensation from OCWC.[13]

12. Foxfire and OCWC have entered into an Agreement for Sale and Purchase of Assets dated December 10, 2019 (Agreement). Pursuant to the Agreement, OCWC agrees to obtain and acquire substantially all of the water and sewer assets of Foxfire under the terms and provisions described in the Agreement.[14]

13. Staff conducted a site inspection of the OCWC facility on March 31, 2022, and found Foxfire's systems to be in good condition.[15]

14. The Missouri Department of Natural Resources ("MoDNR") has informed Staff that it has no outstanding concerns with service issues at any of the current OCWC-run systems.[16]

[10] Id.
[11] Id.; Transcript, p. 8: 17-19
[12] Ex. 100, Casaletto Direct, p. 1.
[13] Id.
[14] Ex. 100, Casaletto Direct, p. 5.
[15] Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, p. 8 of 20.
[16] Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, p. 7 of 20.

15. The purchase price of the assets transferred in the Agreement is $1,285,400.00.[17]

16. Staff's calculation of the estimated "rate base" for Foxfire's combined water and sewer service is $89,852.[18]

17. The "acquisition premium" is $1,195,548, which is the amount the purchase price exceeds the rate base. [19]

18. The $1,285,400 purchase price includes an approximately $1.2 million acquisition premium, which is thirteen times over the estimated rate base of approximately $90,000.[20]

19. The acquisition price in excess of the calculated rate base represents the buyer's annual debt obligation to the seller/financer in the amount of $6,600 per month[21], which is 40% of present revenues.[22]

20. Under the Agreement, Foxfire shall finance the purchase of its assets over a twenty-year period at an annual interest rate of 2.5%.[23]

21. The cash flows from the existing rates will be adequate for OCWC to cover the obligation associated with the purchase price and continue to provide quality service to its customers.[24]

22. In his testimony, Casaletto proposed to use the existing rates for Foxfire customers for at least one year following the acquisition. [25]

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[17] Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, p. 2 of 20.
[18] Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, p. 12 of 20.
[19] Id.
[20] Transcript, pp 16:11-17:1.
[21] Transcript, p. 21:5-8.
[22] Transcript, p. 21:13-16.
[23] Ex. 2, Helms Direct, p. 2. Ex. 100, Casaletto Direct, p. 5.
[24] Ex. 101, Casaletto Surrebuttal, p. 5-6.
[25] Ex. 100, Casaletto Direct, p. 6.

23. OCWC's Board of Directors has established a reserve account funded at 75% of its annual operation and maintenance budget.[26]

24. An Email from Casaletto to the OCWC Board of Directors states OCWC can readily meet its financial obligations with a $25,000 annual surplus reserved for future repairs at the existing rates[27].

25. OCWC has the technical and financial ability to manage the Foxfire systems.[28]

26. Compilations of transactions in Missouri and Illinois on a per customer basis by certified appraisers, as per 2021, indicate a range of water and sewer system sale prices of $649 to $5,263 per customer, with a Median of $3,213 per customer and a Mean of $3,095 per customer.[29]

27. The contract price of $1,285,000, results in the per customer price of $2,491 per customer, not including projected growth.[30]

28. Under a sales comparison approach, showing market data pertaining to utility systems that included water and sewer, the sale price of $3,400 per customer is within the range indicated by the market data.[31]

29. Staff found that the transaction is not detrimental to the public interest and recommended approval of the transfer of assets from Foxfire to OCWC.[32]

[26] Ex. 100, Casaletto Direct, p. 4.
[27] Ex. 300, Email from Casaletto to the OCWC Board (July 10, 2019).
[28] Ex. 200, Robertson Rebuttal, p. 2.
[29] Ex. 101, Casaletto Surrebuttal, p. 5.
[30] Id.
[31] Ex. 101, Casaletto Surrebuttal, Schedule DC-s1.
[32] Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, p. 13 of 20.

30. Helms was both the president of Foxfire, and a board member of OCWC during the time the matter of the transaction was introduced to the board at OCWC. [33]

31. Helms recused himself from OCWC's July 15, 2019 board meeting in which the acquisition of Foxfire was first discussed, and resigned from OCWC's board of directors in August of 2019, before the December 31, 2019 vote to purchase Foxfire's assets at the negotiated price in question.[34]

32. In its recommendation, Staff recommended approval of the sale and transfer of the assets subject to the following conditions:

a. Require Foxfire to notify the Commission of closing on the transfer of water and sewer assets to OCWC within five (5) days after closing;
b. Authorize Foxfire to cease providing service immediately after closing on assets;
c. If closing on Foxfire's assets does not take place within thirty (30) days following the effective date of the Commission's order, require Foxfire to submit a status report, in File No. WM-2022-0186 within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Foxfire determines that the transfer of the assets will not occur;
d. If Foxfire determines that a transfer of the assets will not occur, require Foxfire to notify the Commission of such; and

[33] Ex. 1, Helms Direct, p. 7
[34] Id.

e. After the above notice of transfer of assets to OCWC is received from Foxfire, cancel the CCN applying to Foxfire's Village of Indian Point service area.[35]

Conclusions of Law

A. The Commission "is a Missouri administrative agency charged with the regulation of all public utilities.[36]

B. Foxfire is a "water corporation," a "sewer corporation," and a "public utility" as those terms are defined in Section 386.020, RSMo, and is subject to the jurisdiction and supervision of the Commission as provided by law.[37]

C. OCWC is a nonprofit sewer and water company formed in accordance with Sections 393.825 through 393.861, RSMo.[38]

D. The Commission does not have jurisdiction over the construction, maintenance or operation of the wastewater facilities, service, rates, financing, accounting, or management of any nonprofit sewer company.[39]

E. The lawfulness of an order issued by the Commission is determined by whether statutory authority for its issuance exists.[40] As a creature of statute, an administrative agency's authority is limited to that given it by the legislature.[41]

F. The Commission has jurisdiction to rule on the application because Section 393.190.1, RSMo, requires that no water or sewer corporation shall sell or transfer its

[35] Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, pp. 4-5 of 20.
[36] *In Matter of Verified Application and Petition of Liberty Energy (Midstates) Corp.*, 464 S.W.3d 520, 522 (Mo. banc 2015).
[37] Ex. 200, Robertson Rebuttal, Appx. A, Schedule JJR-r2, p. 7 of 20.
[38] Id.
[39] Section 393.847, RSMo.
[40] *State ex rel. Missouri Public Defender Com'n v. Waters*, 370 S.W.3d 592, 598 (Mo. banc 2012).
[41] Id.

assets without having first secured authorization from the Commission. The Commission must authorize the transfer of a regulated utility's assets, unless the transfer is shown to be detrimental to the public interest.[42]

G. The Commission does not regulate OCWC, nor does it have jurisdiction over OCWC's board of directors or the future rates set by that board.[43]

H. A utility's rate base is the capital investment devoted to, and necessary for, providing reasonable adequate service to customers. . . A utility company is entitled to a rate of return only on investments included in its rate base."[44]

I. The Commission has supervisory powers over all water corporations, all sewer systems, and their operations within this state, and may impose conditions on Foxfire as Staff has recommended. [45]

Decision

Foxfire and OCWC assert that the Commission should grant Foxfire's application to sell substantially all its water and sewer assets to OCWC because it is in the public interest. In such a transaction, the touchstone consideration for the Commission is, whether the proposed transaction is "detrimental to the public."

In approving the transfer of a regulated utility's assets, the Commission must determine that the sale is "not detrimental to the public."[46] The Commission must

[42] *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. 1934).
[43] See *Love 1979 Partners v. Public Service Comm'n of Missouri*, 715 S.W.2d 482 (Mo. 1986).
[44] *State ex rel. Missouri Office of the Public Counsel v. Public Service Com'n of State*, 293 S.W.3d 63 (Mo. App. 2009).
[45] Section 386.250, RSMo.
[46] See *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 335 Mo. 448, 457-60, 73 S.W.2d 393, 399- 400 (Mo. 1934).

authorize the transfer of a regulated utility's assets unless the transfer is shown to be detrimental to the public.[47] OPC argues that the contract price for Foxfire's utility assets incorporates an acquisition premium that will cause harm to Foxfire's customers under OCWC's ownership. Staff, Foxfire, and OCWC disagree, and presented evidence showing the details of the transaction and the likely impact the transaction will have on the rates for service and quality of service provided.

None of the evidence presented explains why the estimated rate base is relevant or appropriate for use in determining the proposed price of a transaction in the sale of utility assets to a private entity outside of the Commission's jurisdiction. None of the evidence presented rebuts OCWC's claim that it can readily meet its financial obligations at the existing rates or show that OCWC is not capable of managing the additional assets upon completion of the transaction. Without a clear indication that OCWC's rates will be excessive, or that the service provided to its customers will decline due to the acquisition of Foxfire's assets, the Commission cannot find that the proposed transaction is detrimental to the public. Also, there was no evidence that the relationship between Helms and Casaletto renders their negotiated price invalid.

The Conditions recommended by Staff are not conditions to the Agreement, but a list of tasks that Foxfire must comply with regarding their relationship with the Commission during the period of the transaction. Neither Foxfire nor OCWC object to these conditions, and OPC has not commented. The Commission will grant Staff's request to include them in its order.

[47] *Environmental Utilities, LLC v. Public Service Comm'n of Missouri*, 219 S.W.3d 256, 265 (Mo. App. W.D. 2007).

The Commission finds that the proposed transfer of assets is not detrimental to the public interest. The Commission will grant the application with the conditions Staff has recommended.

In their Agreement for Sale and Purchase of Assets, Foxfire and OCWC had previously set a closing date for the transaction of Thursday, January 12, 2023. To accommodate this arrangement, the Commission will issue this Report and Order with an effective date shorter than 30 days.

THE COMMISSION ORDERS THAT:

1. Foxfire's application to sell its water and sewer assets to OCWC is granted.

2. Foxfire is authorized to sell and transfer to OCWC the water and sewer utility assets located in Stone County described in the application.

3. Foxfire is authorized to do and perform, or cause to be done and performed, all such acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

4. Foxfire shall notify the Commission of closing on the water and sewer assets with the OCWC within five days of closing.

5. Foxfire shall cease providing service immediately after closing on the assets.

6. If closing on Foxfire's assets does not take place within thirty days following the effective date of the Commission's order, Foxfire shall file a status report within five days after this thirty-day period regarding the status of closing, and additional status

reports within five days after each additional thirty-day period, until closing takes place, or until Foxfire determines that the transfer of the assets will not occur.

7. If Foxfire determines that a transfer of the assets will not occur, Foxfire shall notify the Commission of such.

8. Foxfire's CCN and tariff are cancelled, effective when Foxfire notifies the Commission that the water and sewer assets have been transferred to OCWC.

9. This order shall become effective on January 4, 2023.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeyer CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

Keeling, Regulatory Law Judge

DIGEST OF REPORTS

OF THE

PUBLIC SERVICE COMMISSION

OF THE

STATE OF MISSOURI

LIST OF DIGEST TOPICS

ACCOUNTING

ACCOUNTING

§10. Additions, retirements and replacements

The Commission found that the unrecovered investment in a retired generation asset should not be combined in a single amortization; rather, it is more appropriate and transparent to keep the two accounts distinct and amortize them separately.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 896**

§10. Additions, retirements and replacements

In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 896**

§10. Additions, retirements and replacements

The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 896**

§25. Maintenance, repairs and depreciation
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 896**

§25. Maintenance, repairs and depreciation
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 896**

§29. Property not used
The Commission found that although an initial investment may have been prudent when made, that does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 896**

§29. Property not used
Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable. Installing an Automated Metering Infrastructure (AMI) shut-off capable (SD) meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years into a 20-year depreciable life.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

CERTIFICATES

CERTIFICATES

§21. Grant or refusal of certificate generally
In determining whether to grant a utility a certificate of convenience and necessity (CCN), the Commission has articulated five criteria to guide its determination of whether granting the CCN is "necessary or convenient for the public service" under Section 393.170, RSMo 2016: (1) there must be a need for the service, (2) the applicant must be qualified to provide the proposed service, (3) the applicant must have the financial ability to provide the service, (4) the applicant's proposal must be economically feasible, and (5) the service must promote the public interest. In Re Intercon Gas, Inc., 3 Mo P.S.C. 554, 561 (1991).
SM-2022-0131 **32 MPSC 3d 262**

§21. Grant or refusal of certificate generally
The Commission granted Seven Springs Sewer & Water LLC a certificate of convenience and necessity to operate a sewer system for residential customers in Jefferson County, Missouri upon purchase of the system from TUK, LLC.
SM-2022-0131 **32 MPSC 3d 262**

§21. Grant or refusal of certificate generally
In determining whether to grant a utility a certificate of convenience and necessity (CCN), the Commission has articulated five criteria to guide its determination of whether granting the CCN is "necessary or convenient for the public service" under Section 393.170, RSMo 2016: (1) there must be a need for the service, (2) the applicant must be qualified to provide the proposed service, (3) the applicant must have the financial ability to provide the service, (4) the applicant's proposal must be economically feasible, and (5) the service must promote the public interest. In Re Intercon Gas, Inc., 3 Mo P.S.C. 554, 561 (1991).
WA-2021-0376 **32 MPSC 3d 427**

§21. Grant or refusal of certificate generally
Where water and sewer company sought Commission approval of purchase of municipal water and sewer systems and granting of certificates of convenience and necessity (CCNs), the Commission had concerns with the manner in which the appraised value of the systems was determined, the lack of explanation for the reasoning behind the fair market value determinations of the systems, and the independence of the appraisers, but, ultimately, approved the purchase of the systems and granted the CCNs.
WA-2021-0376 **32 MPSC 3d 427**

§21. Grant or refusal of certificate generally
In determining whether to grant a utility a certificate of convenience and necessity (CCN), the Commission has stated five criteria to guide its determination of whether granting the CCN is "necessary or convenient for the public service" under Section 393.170.3, RSMo (Supp. 2021): (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. In re Tartan Energy Co., 3 Mo P.S.C. 173, 177 (1994).
WA-2023-0026 **32 MPSC 3d 1018**

§21. Grant or refusal of certificate generally
The Commission granted Confluence Rivers Utility Operating Company, Inc. a certificate of convenience and necessity to operate a water and sewer system for residential customers in Lincoln County, Missouri upon purchase of the system from Glenmeadows Water and Sewer LLC.
WA-2023-0026 **32 MPSC 3d 1018**

§21.1. Public interest
MAWC's acquisition of these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission, and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served. The water and sewer systems require repairs and upgrades to continue to provide safe and reliable water and sewer service. The Commission finds that granting a Certificate of Convenience and Necessity to Missouri-American Water Company promotes the public interest.
WA-2022-0293 **32 MPSC 3d 520**

§21.1. Public interest
Confluence Rivers' acquiring these systems promotes the public interest. The public interest is a matter of policy to be determined by the Commission, and it is within the discretion of the Commission to determine when the evidence indicates the public interest would be served. The sewer system requires repairs and upgrades to continue to provide safe and reliable sewer service to existing and future customers. The Commission finds that granting a Certificate of Convenience and Necessity to Confluence Rivers promotes the public interest.
SA-2022-0299 **32 MPSC 3d 536**

§21.2. Technical qualifications of applicant
Missouri-American Water Company has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable water service to 474,000 customers and sewer service to approximately 16,500 customers. Missouri-American Water Company has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely

respond and resolve emergency issues when they arise. Missouri-American Water Company has the financial ability to provide the service, and no external financing approval is being requested.
WA-2022-0293 **32 MPSC 3d 520**

§21.2. Technical qualifications of applicant
Confluence Rivers has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable sewer service to approximately 4,548 customers in its Missouri service areas. Confluence Rivers has demonstrated that it has adequate resources to operate utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Confluence Rivers has the financial ability to provide the service, and no financing approval is being requested.
SA-2022-0299 **32 MPSC 3d 536**

§21.3. Financial ability of applicant
Missouri-American Water Company has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable water service to 474,000 customers and sewer service to approximately 16,500 customers. Missouri-American Water Company has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Missouri-American Water Company has the financial ability to provide the service, and no external financing approval is being requested.
WA-2022-0293 **32 MPSC 3d 520**

§21.3. Financial ability of applicant
Confluence Rivers has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable sewer service to approximately 4,548 customers in its Missouri service areas. Confluence Rivers has demonstrated that it has adequate resources to operate utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Confluence Rivers has the financial ability to provide the service, and no financing approval is being requested.
SA-2022-0299 **32 MPSC 3d 536**

§21.4. Economic feasibility of proposed service
Missouri-American Water Company has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable water service to 474,000 customers and sewer service to approximately 16,500 customers. Missouri-American Water Company has demonstrated that it has adequate resources to operate the utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Missouri-American Water Company has the financial ability to provide the service, and no external financing approval is being requested.
WA-2022-0293 **32 MPSC 3d 520**

§21.4. Economic feasibility of proposed service
Confluence Rivers has demonstrated that it is qualified to provide the service as it is currently providing safe and reliable sewer service to approximately 4,548 customers in its Missouri service areas. Confluence Rivers has

demonstrated that it has adequate resources to operate utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when they arise. Confluence Rivers has the financial ability to provide the service, and no financing approval is being requested.
SA-2022-0299 **32 MPSC 3d 536**

§31. Rate proposals
Confluence Rivers proposes $20 sewer rates as an interim rate for Deer Run, and the Commission finds the proposed $20.00 rate to be just and reasonable.
SA-2022-0299 **32 MPSC 3d 536**

§55.2. Territorial agreements
Territorial agreements must be in writing pursuant to Section 247.172, RSMo (2016). The statute requires that approvals of territorial agreements be in the form of a Report and Order. The statute also provides that territorial agreements must not be detrimental to the public interest.
EO-2022-0143 **32 MPSC 3d 158**

DEPRECIATION

DEPRECIATION

§1. Generally

In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave

consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§1. Generally
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§3. Reports, records and statements
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§9. Generally
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§17. Life of property
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§22. Life of property and salvage
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§31. Electric and power
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§31. Electric and power
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

DISCRIMINATION

DISCRIMINATION

§10. Free service
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§11. Inequality of rates
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§19. Bases for classification and differences
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the

difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§22. Electric and power

In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

ELECTRIC

ELECTRIC

§1. Generally

The Commission rejected a proposal regarding securitization to be included in the tariff as unnecessary due to the self-

applying nature of Section 393.1705, RSMo (Supp. 2021) which directs that the Commission include in any securitization financing order that the securitization charge is "nonbypassable and paid by all existing and future retail customers receiving electrical service from the electrical corporation."
EO-2022-0061 **32 MPSC 3d 361**

§1. Generally
The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the attraction of high load factor customers have a much more consistent load and would improve the load factor, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.
EO-2022-0061 **32 MPSC 3d 361**

§4.1. Change of suppliers
Pursuant to Section 393.106.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential.
EO-2022-0226 **32 MPSC 3d 883**

§4.1. Change of suppliers
Pursuant to Section 394.315.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential, and the Commission has jurisdiction over rural electric

cooperatives for that purpose.
EO-2022-0226 **32 MPSC 3d 883**

§4.1. Change of suppliers
Where applicant did not present evidence (1) that there were problems with reliability, voltage, safety, etc. with service from his current electric supplier; (2) that the current supplier is unable to meet his needs regarding the amount or quality of power; (3) that the power supplied presents a health or safety issue; (4) that the power supplied damaged his equipment; (5) that the provision of electric service to his residence negatively impacts economic development in the area; or (6) that the service provided by his current supplier creates any burden on him not related to the cost of electricity itself; the Commission found that granting applicant's request for a change of electric supplier would not be in the public interest.
EO-2022-0226 **32 MPSC 3d 883**

§4.1. Change of suppliers
Where applicant stated that one of the reasons for requesting a change of electric supplier was the raising of rates by his current supplier, the Commission found that changing suppliers based on rate differential was prohibited by Section 393.106.2, RSMo 2016, and, therefore, not an appropriate ground for granting such a request.
EO-2022-0226 **32 MPSC 3d 883**

§7. Jurisdiction and powers generally
The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the

attraction of high load factor customers have a much more consistent load and would improve the load factor, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.
EO-2022-0061 **32 MPSC 3d 361**

§9. Jurisdiction and powers of the State Commission
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.
EO-2022-0102 **32 MPSC 3d 001**

§9. Jurisdiction and powers of the State Commission
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.
EO-2022-0132 **32 MPSC 3d 007**

§9. Jurisdiction and powers of the State Commission
The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the attraction of high load factor customers have a much more consistent load and would improve the load factor, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.
EO-2022-0061 **32 MPSC 3d 361**

§9. Jurisdiction and powers of the State Commission
The parties asked the Commission to extend authorization

for Ameren Missouri to participate in MISO indefinitely rather than for a fixed term. The Commission granted the unopposed motion.
EO-2011-0128 **32 MPSC 3d 390**

§9. Jurisdiction and powers of the State Commission
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.
EO-2022-0264 **32 MPSC 3d 421**

§9. Jurisdiction and powers of the State Commission
The utility asked the Commission to extend authorization for it to participate in SPP for an additional two years. The Commission granted the unopposed motion.
EO-2012-0269 **32 MPSC 3d 484**

§11. Territorial agreements
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.
EO-2022-0102 **32 MPSC 3d 001**

§11. Territorial agreements
The Commission may approve a territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.
EO-2022-0102 **32 MPSC 3d 001**

§11. Territorial agreements
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.
EO-2022-0132 **32 MPSC 3d 007**

§11. Territorial agreements
The Commission may approve a territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.
EO-2022-0132 **32 MPSC 3d 007**

§11. Territorial agreements
The Commission has jurisdiction over territorial agreements between electrical corporations and rural electric cooperatives pursuant to Section 394.312.1, RSMo.
EO-2022-0264 **32 MPSC 3d 421**

§11. Territorial agreements
The Commission may approve a territorial agreement's service area designation if it is in the public interest and the resulting agreement in total is not detrimental to the public interest.
EO-2022-0264 **32 MPSC 3d 421**

§13.1. Energy Efficiency
The Commission found that imprudent energy costs that are recovered through a Fuel Adjustment Clause (FAC) should be adjusted in the FAC, and imprudent Missouri Energy Efficiency Investment Act (MEEIA) costs that are recovered through a Demand-Side Programs Investment Mechanisms (DSIM) should be adjusted through the DSIM.
EO-2020-0227 **32 MPSC 3d 287**

§13.1. Energy Efficiency
The Commission found that Evergy acted imprudently in giving away thermostats to customers who did not ultimately participate in the program where the tariff restricted the thermostats to "participants".
EO-2020-0227 **32 MPSC 3d 287**

§13.1. Energy Efficiency
The Commission found prudent Evergy's actions in controlling the program's budget by restricting free programmable thermostats to those installed via a certain method.
EO-2020-0227 **32 MPSC 3d 287**

§13.1. Energy Efficiency
Concerns about the incentive levels to be paid in programs needed to be raised during the authorization process and not in a prudency review.
EO-2020-0227 **32 MPSC 3d 287**

§13.1. Energy Efficiency
The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the attraction of high load factor customers have a much more consistent load and would improve the load factor, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.
EO-2022-0061 **32 MPSC 3d 361**

§14. Rules and regulations
The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the

attraction of high load factor customers have a much more consistent load and would improve the load factor, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.
EO-2022-0061 **32 MPSC 3d 361**

§15. Cooperatives
Pursuant to Section 394.315.2, RSMo 2016, the Commission may, upon application made by an affected party, order a change of suppliers on the basis that it is in the public interest for a reason other than rate differential, and the Commission has jurisdiction over rural electric cooperatives for that purpose.
EO-2022-0226 **32 MPSC 3d 883**

§18. Depreciation
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 897**

§18. Depreciation
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§19. Discrimination
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission

found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§20. Rates
Section 386.266, RSMo, gives the Commission authority to authorize an electrical corporation to use a periodic rate adjustment mechanism, such as a Fuel Adjustment Clause. Such mechanisms allow the utility an opportunity to recover prudently incurred fuel and purchased power costs, including transportation.
EO-2020-0262 **32 MPSC 3d 317**

§20. Rates
The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order did not approve any traditional ratemaking structure for residential customers.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§20. Rates
The Commission found that although an initial investment may have been prudent when made, that does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§31. Equipment
Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable. Installing an Automated Metering Infrastructure

(AMI) shut-off capable (SD) meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years into a 20-year depreciable life.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§31. Equipment
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§33. Maintenance
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§39. Costs and expenses
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§42. Planning and management
The Commission directed the electric utility to address specified planning issues in its next Integrated Resource Plan (IRP) filing.
EO-2021-0035 & EO-2021-0036 **32 MPSC 3d 183**

§42. Planning and management
The Commission declined to issue a scheduling conference before it is determined whether a hearing is necessary, pursuant to 20 CSR 4240-22.080(10).
EO-2021-0035 & EO-2021-0036 **32 MPSC 3d 183**

§42. Planning and management
An Integrated Resource Plan (IRP) filing is a non-contested case.
EO-2021-0035 & EO-2021-0036 **32 MPSC 3d 183**

§42. Planning and management
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§42. Planning and management
In finding that a party did not raise a serious doubt about Evergy's resource planning, the Commission found that the party did not adequately address undepreciated investment and also failed to address the fact that these coal plants are not solely Evergy's to control and determine a retirement date.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

§45. Decommissioning costs
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 898**

EVIDENCE, PRACTICE AND PROCEDURE

EVIDENCE, PRACTICE AND PROCEDURE

§1. Generally
The Commission is not authorized to issue advisory opinions.
ET-2021-0151 **32 MPSC 3d 013**

§1. Generally
The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the attraction of high load factor customers have a much more consistent load and would improve the load factor, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.
EO-2022-0061 **32 MPSC 3d 361**

§1. Generally
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.
GC-2023-0143 **32 MPSC 3d 1003**

§2. Jurisdiction and powers
The Spring Branch water system was included in the Staff of the Commission's recommendation, and is appropriately referenced elsewhere in the ordered paragraphs. There is no dispute regarding the Commission's intent to grant a Certificate of Convenience and Necessity to Confluence

Rivers to acquire the Spring Branch system. Accordingly, the Commission will correct the ordered paragraph nunc pro tunc.
WA-2021-0425 & SA-2021-0426 **32 MPSC 3d 284**

§2. Jurisdiction and powers
The Commission is foreclosed from issuing orders that would have a general applicability. A proposed presumed prudence limit requires a rulemaking procedure and should be prospective.
EO-2020-0227 **32 MPSC 3d 287**

§2. Jurisdiction and powers
The Commission found that it has the authority to provide a variance from the Renewable Energy Standard (RES) counting and the Renewable Energy Standard Adjustment Mechanism (RESRAM) charges as the RES statute delegates rulemaking authority to the Commission, but only to the extent such rules are consistent with the RES. The Commission found good cause to grant the variances as the attraction of high load factor customers have a much more consistent load and would improve the load factor, and that the granted variance is consistent with the goals of the RES to increase renewable generation and increase consumption of renewable energy.
EO-2022-0061 **32 MPSC 3d 361**

§2. Jurisdiction and powers
The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.” The term "necessity" does not mean "essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned

by lack of the proposed service is great enough to amount to a necessity.
WA-2022-0229 **32 MPSC 3d 488**

§2. Jurisdiction and powers
Whether an entity is a public utility requiring the Commission's regulation is within the primary jurisdiction of the Commission and is of utmost importance in determining whether an entity should be regulated by the Commission for the provision of safe and adequate service. Staff's response points out that what an entity says it does and what it actually does may be different. The only way Staff can ascertain that I-70 is providing the services as it professes is by physically examining the water and sewer systems.
WC-2022-0295 **32 MPSC 3d 506**

§2. Jurisdiction and powers
Counsel for I-70 Mobile City Park asserted that no Commission order granting entry onto land shall be enforceable except upon order of the Circuit Court, citing Section 536.073.2, RSMo. The Commission recognizes that its order to allow Staff to enter property may only be enforced by action of the circuit court.
WC-2022-0295 **32 MPSC 3d 545**

§2. Jurisdiction and powers
Section 393.140(7), RSMo., gives the Commission and its Staff the power to inspect the property, building, plants, factories, powerhouses, ducts, conduits, and offices of any water or sewer corporation. This authority is appropriate if its actions are consistent with the Commission's mission to ensure that Missourians receive safe and reliable utility services at just and reasonable rates. Accordingly, the Commission may authorize its Staff to conduct an inspection of I-70 Mobile City Park's premises.
WC-2022-0295 **32 MPSC 3d 545**

§4. Presumption and burden of proof
In order to disallow an incurred cost on the basis of imprudence, the Commission must find both that the utility acted imprudently, and that the imprudence resulted in harm to the utility's ratepayers.
EO-2020-0227 **32 MPSC 3d 287**

§4. Presumption and burden of proof
The Commission found that Evergy acted imprudently in giving away thermostats to customers who did not ultimately participate in the program where the tariff restricted the thermostats to “participants”.
EO-2020-0227 **32 MPSC 3d 288**

§4. Presumption and burden of proof
The Commission found prudent Evergy’s actions in controlling the program’s budget by restricting free programmable thermostats to those installed via a certain method.
EO-2020-0227 **32 MPSC 3d 288**

§4. Presumption and burden of proof
Where no evidence was presented by the Office of the Public Counsel rebutting the purchaser’s claim that it can readily meet its current or financial obligations at the existing utility rates, and without clear indication that the purchaser’s rates will be excessive, or that the service provided to customer will decline due to the acquisition of the assets, the Commission held that the proposed transfer of assets is not detrimental to the public interest.
WM-2022-0186 **32 MPSC 3d 1044**

§6. Weight, effect and sufficiency
Evidence of a contemporaneous test of showing that the meter was more accurate than required by law outweighs evidence showing the lack of a flood or the disposal of large

amounts of water, and rebuts complainant's claims that the water in question was not delivered to his property through the meter.
WC-2021-0075 **32 MPSC 3d 202**

§6. Weight, effect and sufficiency
If the accuracy of a meter has been verified by a test, facts challenging the water use record's accuracy are given less weight than if the meter has not been tested.
WC-2021-0075 **32 MPSC 3d 202**

§6. Weight, effect and sufficiency
The determination of witness credibility is left to the Commission, "which is free to believe none, part or all of the testimony."
WC-2021-0075 **32 MPSC 3d 202**

§6. Weight, effect and sufficiency
Neither Mr. Stiens nor Liberty are responsible for any delay caused by the postal service. Mr. Stiens' complaint attempts to hold Liberty responsible for an apparent postal delay. It is understandable that Mr. Stiens is upset at having received a shut-off notice, but the Commission finds no credence in his argument that his reputation has been tarnished "forever."
GC-2021-0395 **32 MPSC 3d 270**

§6. Weight, effect and sufficiency
Concerns about the incentive levels to be paid in programs needed to be raised during the authorization process and not in a prudency review.
EO-2020-0227 **32 MPSC 3d 288**

§6. Weight, effect and sufficiency
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life

was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 899**

§6. Weight, effect and sufficiency
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 899**

§6. Weight, effect and sufficiency
The Commission found that although an initial investment may have been prudent when made, that does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 899**

§6. Weight, effect and sufficiency
Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable. Installing an Automated Metering Infrastructure (AMI) shut-off capable (SD) meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years into a 20-year depreciable life.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 899**

§6. Weight, effect and sufficiency
Because Subscription Pricing, absent other factors, is more likely than not to result in higher bills to customers, the

Commission found it would likely result in unjust and unreasonable rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 899**

§6. Weight, effect and sufficiency
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 899**

§6. Weight, effect and sufficiency
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.
GC-2023-0143 **32 MPSC 3d 1003**

§6. Weight, effect and sufficiency
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments.
GC-2023-0143 **32 MPSC 3d 1003**

§6. Weight, effect and sufficiency
In ruling on a motion to dismiss a complaint for failure to state a cause of action, complaints or other pleas before the Commission are not tested by the rules applicable to

pleadings in general, if a complaint or petition fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.
GC-2023-0143 **32 MPSC 3d 1003**

§6. Weight, effect and sufficiency
The Commission held that the Complainant's characterization of gas service as "alleged" posed the question of whether the gas service billed for was provided.
GC-2023-0143 **32 MPSC 3d 1003**

§6. Weight, effect and sufficiency
Where no evidence was presented by the Office of the Public Counsel rebutting the purchaser's claim that it can readily meet its current or financial obligations at the existing utility rates, and without clear indication that the purchaser's rates will be excessive, or that the service provided to customer will decline due to the acquisition of the assets, the Commission held that the proposed transfer of assets is not detrimental to the public interest.
WM-2022-0186 **32 MPSC 3d 1044**

§7. Competency
In finding that a party did not raise a serious doubt about Evergy's resource planning, the Commission found that the party did not adequately address undepreciated investment and also failed to address the fact that these coal plants are not solely Evergy's to control and determine a retirement date.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 899**

§8. Stipulation
Parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case, and the Commission may resolve all or any part of a

contested case on the basis of a stipulation and agreement. Upon approving a stipulation and agreement, the Commission need not convene a hearing, and need not state its findings of fact and conclusions of law.
EA-2022-0099 **32 MPSC 3d 465**

§8. Stipulation
A nonunanimous stipulation and agreement is any stipulation and agreement entered into by fewer than all of the parties, but if no party objects to a nonunanimous stipulation and agreement within seven days of its filing with the Commission, then the Commission may treat it as a unanimous stipulation.
EA-2022-0099 **32 MPSC 3d 465**

§8. Stipulation
The Commission did not oppose the parties' efforts to reach agreement on certain contested issues, nor was the Commission dissatisfied with the terms of the Stipulation when complete. However, as proposed by the Stipulation, the Commission would be approving a financing order developed by the signatories that had yet to be written, and it is unclear if the Commission would be able to modify that financing order. The Commission will not approve the Stipulation because it is incomplete without a financing order and provided for no opportunity for Commission examination and input on the financing order.
EF-2022-0155 **32 MPSC 3d 737**

§9. Particular kinds of evidence generally
Complainant's only evidence that his meter has not been changed is his testimony that he does not remember allowing anyone onto the property to change the meter in November of 2009. Complainant's witness's testimony is unsupportive as she is not certain whether they were visiting

their St. Louis residence during Thanksgiving 2009. Missouri-American Water Company provided documentation that it changed Complainant's meter in 2009. Photos of Complainant's meter show that the meter is a Neptune meter and that the serial number matches the number Missouri-American Water Company provided in its meter change service order documentation.
WC-2021-0129 **32 MPSC 3d 064**

§9. Particular kinds of evidence generally
In order to disallow an incurred cost on the basis of imprudence, the Commission must find both that the utility acted imprudently, and that the imprudence resulted in harm to the utility's ratepayers.
EO-2020-0227 **32 MPSC 3d 287**

§9. Particular kinds of evidence generally
The Commission found that Evergy acted imprudently in giving away thermostats to customers who did not ultimately participate in the program where the tariff restricted the thermostats to "participants".
EO-2020-0227 **32 MPSC 3d 288**

§9. Particular kinds of evidence generally
The Commission found prudent Evergy's actions in controlling the program's budget by restricting free programmable thermostats to those installed via a certain method.
EO-2020-0227 **32 MPSC 3d 288**

§9. Particular kinds of evidence generally
Section 393.140(7), RSMo., gives the Commission and its Staff the power to inspect the property, building, plants, factories, powerhouses, ducts, conduits, and offices of any water or sewer corporation. This authority is appropriate if its

actions are consistent with the Commission's mission to ensure that Missourians receive safe and reliable utility services at just and reasonable rates. Accordingly, the Commission may authorize its Staff to conduct an inspection of I-70 Mobile City Park's premises.
WC-2022-0295 **32 MPSC 3d 545**

§12. Depositions
Missouri does not have any special discovery rule relating to the deposition of a high-level executive of a corporation. The Missouri Supreme Court specifically declined to adopt such an "apex" rule, instead holding that a deposition of "top-level decision-makers" should proceed in accordance with the general discovery rules.
GC-2021-0315, GC-2021-0316 and GC-2021-0353
32 MPSC 3d 119

§12. Depositions
Top-level depositions may be annoying, burdensome, expensive, and oppressive. The organization or the top-level employee may seek a protective order. A protective order should be issued if annoyance, oppression and undue burden and expense outweigh the need for discovery.
GC-2021-0315, GC-2021-0316 and GC-2021-0353
32 MPSC 3d 120

§12. Depositions
For top level employee depositions the court should consider whether other methods of discovery have been pursued; the proponent's need for discovery by top-level deposition; and the burden, expense, annoyance, and oppression to the organization and the proposed deponent. The party or person opposing discovery has the burden of showing good cause to limit discovery.

GC-2021-0315, GC-2021-0316 and GC-2021-0353
32 MPSC 3d 120

§12. Depositions
A party may subpoena as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. The person so designated shall testify as to matters known or reasonably available to the organization.
GC-2021-0316 **32 MPSC 3d 146**

§12. Depositions
The deposition of a corporate representative is not the deposition of that individual for his or her personal recollections or knowledge but is instead the deposition of the corporate defendant. If the representative can state simply that he has no personal knowledge of the matter, then a party engaged in litigation against a corporation would be placed at a significant disadvantage, subject to deposition by the corporate defendant but left with little access to what knowledge could be imputed to the corporation.
GC-2021-0316 **32 MPSC 3d 146**

§13. Documentary evidence
In deciding whether discovery is to be had, the tribunal is to consider whether the discovery is: proportional to the needs of the case considering the totality of the circumstances, including but not limited to, the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties'

resources, the importance of the discovery in resolving the issues, and whether the burden or expenses of the proposed discovery outweighs its likely benefit.
GC-2021-0315, GC-2021-0316 and GC-2021-0353
32 MPSC 3d 130

§13. Documentary evidence
The Commission's rules of procedure provide that discovery before the Commission may be obtained by the same means and under the same conditions as in civil actions in circuit court. In addition, parties may use data requests as a means of discovery. Data requests are enforceable by means of a motion to compel pursuant to Missouri Rules of Civil Procedure Section 61.01(g).
GC-2021-0316 **32 MPSC 3d 137**

§17. Photographs
Complainant's only evidence that his meter has not been changed is his testimony that he does not remember allowing anyone onto the property to change the meter in November of 2009. Complainant's witness's testimony is unsupportive as she is not certain whether they were visiting their St. Louis residence during Thanksgiving 2009. Missouri-American Water Company provided documentation that it changed Complainant's meter in 2009. Photos of Complainant's meter show that the meter is a Neptune meter and that the serial number matches the number Missouri-American Water Company provided in its meter change service order documentation.
WC-2021-0129 **32 MPSC 3d 064**

§22. Parties
The Staff of the Public Service Commission has no legal existence apart from the Commission itself and is not a proper respondent.
WC-2021-0075 **32 MPSC 3d 202**

§22. Parties
Commission Rule 20 CSR 4240-2.075(10) allows the Commission to grant a motion to intervene after the intervention deadline date "upon a showing of good cause."
EA-2022-0244 **32 MPSC 3d 530**

§22. Parties
Where an application to intervene was filed after the intervention deadline date, the Commission denied intervention for failure of the application to state a good cause basis for granting the application.
EA-2022-0244 **32 MPSC 3d 530**

§22. Parties
Commission Rule 20 CSR 4240-2.075(10) allows the Commission to grant a motion to intervene after the intervention date upon a showing of good cause. MIEC's intervention application does not request that it be granted leave to file its application out of time, nor does it state a good cause basis for granting its untimely application.
EA-2022-0245 **32 MPSC 3d 533**

§22. Parties
Commission Rule 20 CSR 4240-2.075(3) states the Commission may grant intervention if the proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case or if granting the intervention would serve the public interest.
EA-2023-0017 **32 MPSC 3d 702**

§22. Parties
On October 12, 2022, the University of Missouri filed an application to intervene out of time. Intervention out of time may be granted upon a showing of good cause, as provided by Commission Rule 20 CSR 4240-2.075(10).

GR-2022-0179 **32 MPSC 3d 712**

§22. Parties
The Commission agrees with Spire that at this late stage allowing the University of Missouri to intervene does not serve the public interest. The University of Missouri is a sophisticated party and is responsible for seeing that notice of cases before the Commission reach the "correct employee" in a timely manner. Both direct and rebuttal testimony have been filed. The Commission finds that allowing the University of Missouri to intervene at this late stage unfairly prejudices the parties and intervenors who have already filed testimony advancing their positions and have responded to testimony based upon other party positions. Allowing the University of Missouri to intervene risks interjecting new issues that are not supported in testimony.
GR-2022-0179 **32 MPSC 3d 712**

§23. Notice and hearing
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.
EO-2022-0102 **32 MPSC 3d 001**

§23. Notice and hearing
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.
EO-2022-0132 **32 MPSC 3d 007**

§23. Notice and hearing
The Commission can treat a non-unanimous stipulation and agreement as unanimous if no party files a timely objection.
GR-2021-0320 **32 MPSC 3d 405**

§23. Notice and hearing
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.
EO-2022-0264 **32 MPSC 3d 421**

§23. Notice and hearing
The Commission ordered notification of a pending rate case within an acquisition case.
WA-2022-0229 **32 MPSC 3d 488**

§23. Notice and hearing
The purpose of the 60-day notice rule is to provide notice to the Commission of issues liable to come before it so that the Commission can avoid improper extra-record communications about those issues. The Commission may find good cause to grant a waiver of the notice requirement when an applicant provides an affidavit stating it has not had contact with the Office of the Commission within 150 days.
EA-2023-0017 **32 MPSC 3d 707**

§24. Procedures, evidence and proof
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.
EO-2022-0102 **32 MPSC 3d 001**

§24. Procedures, evidence and proof
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.
EO-2022-0132 **32 MPSC 3d 007**

§24. Procedures, evidence and proof
If an agreement has been reached in a territorial agreement and no hearing has been requested none is necessary for the Commission to make a determination.
EO-2022-0264 **32 MPSC 3d 421**

§24. Procedures, evidence and proof
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.
GC-2023-0143 **32 MPSC 3d 1003**

§24. Procedures, evidence and proof
For the Commission to grant a motion for summary disposition, the Commission must determine: (1) there is no genuine dispute as to any material fact; (2) a party is entitled to relief as a matter of law; and (3) summary disposition is in the public interest. There is a factual dispute between the parties as to whether or not Grain Belt has abandoned the certificate of convenience and necessity (CCN) granted in File No. EA-2016-0358. There is also a dispute as to the legal implications of the alleged abandonment on an application for a new CCN if the Commission finds that an abandonment of the prior CCN did occur. These factual and legal disputes demonstrate that Missouri Landowners Alliance has not met its burden of proving that it is entitled to judgment as a matter of law.
EA-2023-0017 **32 MPSC 3d 1040**

§25. Pleadings and exhibits
Concerns about the incentive levels to be paid in programs needed to be raised during the authorization process and not in a prudency review.
EO-2020-0227 **32 MPSC 3d 288**

§25. Pleadings and exhibits
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission merely considers the adequacy of the complaint. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.
GC-2023-0143 **32 MPSC 3d 1003**

§25. Pleadings and exhibits
In ruling on a motion to dismiss a complaint for failure to state a cause of action, the Commission must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments.
GC-2023-0143 **32 MPSC 3d 1003**

§25. Pleadings and exhibits
In ruling on a motion to dismiss a complaint for failure to state a cause of action, complaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.
GC-2023-0143 **32 MPSC 3d 1003**

§25. Pleadings and exhibits
The Commission held that the Complainant's characterization of gas service as "alleged" posed the question of whether the gas service billed for was provided.
GC-2023-0143 **32 MPSC 3d 1003**

§26. Burden of proof
The Commission is not confined to the issues proposed by the parties. The Commission's statutory mandate is to determine whether a utility subject to the Commission's jurisdiction has violated any provision of law subject to the

Commission's authority, any rule promulgated by the Commission, any utility tariff, or any order or decision of the Commission. A complainant should have their case heard when they can explain in practical terms the basis for the complaint.
WC-2021-0129 **32 MPSC 3d 064**

§26. Burden of proof
The question before the Commission is not, what happened to the water, but whether Missouri-American Water Company violated any statute, rule, or tariff provision. Complainant did not provide sufficient evidence to support his assertion that, because the meter reading is high, Missouri-American Water Company incorrectly read his meter.
WC-2021-0129 **32 MPSC 3d 064**

§26. Burden of proof
In order to disallow an incurred cost on the basis of imprudence, the Commission must find both that the utility acted imprudently, and that the imprudence resulted in harm to the utility's ratepayers.
EO-2020-0227 **32 MPSC 3d 287**

§26. Burden of proof
The Commission found that Evergy acted imprudently in giving away thermostats to customers who did not ultimately participate in the program where the tariff restricted the thermostats to “participants”.
EO-2020-0227 **32 MPSC 3d 288**

§26. Burden of proof
The Commission found prudent Evergy’s actions in controlling the program’s budget by restricting free

programmable thermostats to those installed via a certain method.
EO-2020-0227 **32 MPSC 3d 288**

§27. Finality and conclusiveness
The determination of witness credibility is left to the Commission, "which is free to believe none, part or all of the testimony."
WC-2021-0075 **32 MPSC 3d 202**

§29. Discovery
Obtaining discovery by permission to enter upon land or other property, for inspection and other purposes is an acceptable method of obtaining discovery pursuant to Missouri Supreme Court Rule 56.01(a). Water systems and sewer systems occupy a large physical presence and an In-person examination of those systems is a reasonable method of ascertaining information about the physical structure of the water and sewer systems. The Commission does not find Staff's request to enter I-70's property to inspect the water and sewer systems unreasonable.
WC-2022-0295 **32 MPSC 3d 506**

EXPENSE

EXPENSE

§3. Financing practices

On March 11, 2022, Evergy Missouri West, Inc. d/b/a Evergy Missouri West submitted to the Commission a petition for a financing order, seeking authority to issue securitized utility tariff bonds regarding the extraordinary costs incurred by Evergy West on behalf of its customers during the mid-February 2021 cold weather event known as Winter Storm

Uri. Evergy West filed that petition under Section 393.1700, RSMo.
EF-2022-0155 **32 MPSC 3d 737**

§17. Extraordinary and unusual expenses
On March 11, 2022, Evergy Missouri West, Inc. d/b/a Evergy Missouri West submitted to the Commission a petition for a financing order, seeking authority to issue securitized utility tariff bonds regarding the extraordinary costs incurred by Evergy West on behalf of its customers during the mid-February 2021 cold weather event known as Winter Storm Uri. Evergy West filed that petition under Section 393.1700, RSMo.
EF-2022-0155 **32 MPSC 3d 737**

§17. Extraordinary and unusual expenses
The Commission finds, based on the decisions in the following subsections, that Evergy West's costs in the amount of $307,811,246 incurred in relation to Winter Storm Uri are prudently incurred costs of an extraordinary nature that would cause extreme customer rate impacts if reflected in customer rates recovered through customary ratemaking and as such are "qualified extraordinary costs" as defined in Section 393.1700.1(13), RSMo.
EF-2022-0155 **32 MPSC 3d 737**

§19. Future expenses
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§22. Reasonableness generally
To ensure that only prudently incurred costs are recovered, Subsection 386.266.5(4), RSMo, requires that any authorized periodic rate adjustment mechanism provide for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate.
EO-2020-0262 **32 MPSC 3d 317**

§22. Reasonableness generally
The Commission finds that the recovery of this amount is just and reasonable and in the public interest. The Commission further finds that Winter Storm Uri was an "anomalous weather event" within the meaning of that statutory definition.
EF-2022-0155 **32 MPSC 3d 738**

§23. Comparisons to test reasonableness
To ensure that only prudently incurred costs are recovered, Subsection 386.266.5(4), RSMo, requires that any authorized periodic rate adjustment mechanism provide for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate.
EO-2020-0262 **32 MPSC 3d 317**

§24. Maintenance and depreciation; repairs and replacements
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive

detriments to keeping that generation in service, namely the cost to repair and keep it operational.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

GAS

GAS

§18. Rates

The language in Section 393.310.4 RSMo which states "including related transportation service costs," and "plus an aggregation and balancing fee to be determined by the commission" does not mean that school districts are entitled to transportation service "at cost."
GR-2021-0320 **32 MPSC 3d 405**

MANUFACTURED HOUSING

MANUFACTURED HOUSING

No headnotes in this volume involved the question of Manufactured Housing.

PUBLIC UTILITIES

PUBLIC UTILITIES

§3. Functions and powers

Securitization is a financing technique in which certain assets are legally isolated within a special purpose entity. Investors then purchase securities that represent either debt or equity interest in the special purpose entity. The special purpose entity will issue bonds backed primarily by a statutory and regulatory right to receive a charge to be paid by a utility's customers. The securitized bonds are non-recourse to and bankruptcy remote from any operating company.

EO-2022-0040 & EO-2022-0193 **32 MPSC 3d 555**

§3. Functions and powers
The goal of securitization is to structure the securities in a way that will allow them to achieve the highest bond rating possible. That will allow the issuer to set the price for those bonds at the lowest interest rate possible, thus saving ratepayers money compared to the amount they would have to pay if a traditional method of financing, at a higher interest rate, were used.
EO-2022-0040 & EO-2022-0193 **32 MPSC 3d 555**

§3. Functions and powers
Section 393.1700.2(3)(c)b, RSMo, requires the Commission to find that the securitization process are expected to provide net present value benefits to customers when compared to recovery of costs through other, traditional methods of ratemaking.
EO-2022-0040 & EO-2022-0193 **32 MPSC 3d 555**

§5. Obligation of the utility
Pursuant to 386.370, RSMo, the Commission estimates the expenses to be incurred by it during the fiscal year. These expenses are reasonably attributable to the regulation of public utilities as provided in Chapters 386, 392 and 393, RSMo.
AO-2022-0346 **32 MPSC 3d 400**

§7. Jurisdiction and powers of the State Commission
Section 393.140(11), RSMo, authorizes the Commission to order changes to tariffs, or in any form of contract or agreement, and its rates or charges or services.
WE-2021-0390 **32 MPSC 3d 226**

§7. Jurisdiction and powers of the State Commission
Although a tariff becomes the law of Missouri, placing the text of rules into a tariff does not limit the power of the

Commission to promulgate conflicting rules that it has the statutory authority to create.
WE-2021-0390 **32 MPSC 3d 226**

§7. Jurisdiction and powers of the State Commission
The Commission is bound to follow a utility's tariff as are the utility's customers and the utility itself. But the existence of a tariff cannot nullify the Commission's authority and obligation to regulate Missouri's utilities in a way that protects the public. This implies that the Commission can waive application of a provision of a utility's tariff if doing so is necessary to protect the public interest.
WE-2021-0390 **32 MPSC 3d 226**

RATES

RATES

§1. Jurisdiction and powers generally

The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order did not approve any traditional ratemaking structure for residential customers.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§3. Jurisdiction and powers of the State Commission

The legislature can, by implication, authorize the Commission to engage in single issue rate making without an explicit grant of such authority in the statute.
ET-2021-0151 **32 MPSC 3d 013**

§3. Jurisdiction and powers of the State Commission

Where a decision of the Commission rests on the exercise of regulatory discretion, a reviewing court will not substitute its

judgment for that of the Commission, particularly on issues within its area of expertise.
ER-2021-0240 **32 MPSC 3d 083**

§8. Reasonableness generally
Because Subscription Pricing, absent other factors, is more likely than not to result in higher bills to customers, the Commission found it would likely result in unjust and unreasonable rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§20. Costs and expenses
The rationale of the prohibition on single issue rate making is to prevent the Commission from permitting a utility to raise rates to cover increased costs in one area without considering counterbalancing savings in another area. That rationale does not apply to rates being applied to new services for which a rate has not previously been in effect.
ET-2021-0151 **32 MPSC 3d 013**

§20. Costs and expenses
The rationale of the prohibition on single issue rate making is to prevent the Commission from permitting a utility to raise rates to cover increased costs in one area without considering counterbalancing savings in another area. That rationale does not apply to rates being applied to new services for which a rate has not previously been in effect.
ER-2021-0240 **32 MPSC 3d 083**

§21. Discrimination, partiality, or unfairness
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the

meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§21. Discrimination, partiality, or unfairness
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§23. Efficiency of operation and management
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§23. Efficiency of operation and management
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§28. Large consumption
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§31. Maintenance of service
In deciding whether the retirement of a coal fired generation with approximately 20 years of remaining depreciable life was prudent – the Commission found significant definitive detriments to keeping that generation in service, namely the cost to repair and keep it operational.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§40. Revenues
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§41. Return
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the

meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§67. Publication and notice
The Commission ordered notification of a pending rate case within an acquisition case.
WA-2022-0229 **32 MPSC 3d 489**

§78. Optional rate schedules
The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order did not approve any traditional ratemaking structure for residential customers.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§80. Kinds and forms of rates and charges in general
The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order did not approve any traditional ratemaking structure for residential customers.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§84. Load, diversity and other factors
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§84. Load, diversity and other factors
The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order

did not approve any traditional ratemaking structure for residential customers.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§101. Fuel clauses
Under traditional cost-of-service ratemaking, rates are only changed in a general rate case. A Fuel Adjustment Clause permits adjustments of rates based upon fuel and purchased power costs between general rate cases. Fuel Adjustment Clauses reduce regulatory lag with respect to fuel costs, and thus reduces its impact on both the utility and customer. Utilities benefit in having a Fuel Adjustment Clause by being able to recover any increases in fuel and purchased power costs between rate cases. Likewise, customers benefit by receiving credits for fuel and purchased power costs that prove less than expected. Utilities are not required to have a Fuel Adjustment Clause.
ER-2022-0025 **32 MPSC 3d 189**

§101. Fuel clauses
Fuel Adjustment Clauses are specific to the utility and their terms are contained within the utility's tariff. A utility's Fuel Adjustment Clause is approved in a general rate case and is subsequently modified or continued in future rate cases. Similar to the establishment or modification of an Fuel Adjustment Clause, the Commission has no authority to modify a utility's Fuel Adjustment Clause outside of a general rate case.
ER-2022-0025 **32 MPSC 3d 189**

§101. Fuel clauses
Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI), provides that extraordinary costs are not to be passed through the Fuel Adjustment Clause if those extraordinary costs are due to an insured loss, subject to a reduction due to litigation, or for any other reason. The first two reasons for

excluding extraordinary costs are logical; costs for an insured loss will be recovered from the insurer and costs that could be reduced because of litigation are uncertain. The basis for the exclusion of extraordinary costs for any other reason is less clear, but the Commission is given the ability to allow for the exclusion of extraordinary costs from passing through the Fuel Adjustment Clause if there is a good reason to do so.
ER-2022-0025 **32 MPSC 3d 189**

§101. Fuel clauses
There is no provision in Evergy Metro's Fuel Adjustment Clause rider that would allow it to defer off-system sales revenue from passing through its Fuel Adjustment Clause rate adjustment tariff. The Commission found that the plain language of its rule does not permit Evergy Metro to defer extraordinary revenues from its Fuel Adjustment Clause adjustment tariff.
ER-2022-0025 **32 MPSC 3d 190**

§101. Fuel clauses
The Commission found that imprudent energy costs that are recovered through a Fuel Adjustment Clause (FAC) should be adjusted in the FAC, and imprudent Missouri Energy Efficiency Investment Act (MEEIA) costs that are recovered through a Demand-Side Programs Investment Mechanisms (DSIM) should be adjusted through the DSIM.
EO-2020-0227 **32 MPSC 3d 288**

§101. Fuel clauses
Where electric utility proposed that $31 million of what it termed "extraordinary" fuel costs not pass through its fuel adjustment clause, but instead be deferred and included in a regulatory asset under the provisions of Section 393.1655.5 (Supp. 2021), the Commission denied the request as the Commission has no authority under the statute to exclude

consideration of the rebasing of base energy costs required in a general rate case from the calculation of the 3% compound annual growth rate (CAGR) cap set forth in Section 393.1655.3 (Supp. 2021).
ER-2023-0011 **32 MPSC 3d 716**

§101. Fuel clauses
Customarily, Evergy West would recover fuel and purchased power costs in excess of those reflected in its base rates through its Fuel Adjustment Clause contained in its tariff, which is where the costs Evergy West seeks to securitize were removed from. Due to the extraordinary nature of the costs for fuel and purchased power attributable to Winter Storm Uri, 56 the Commission permitted Evergy West to remove those costs from its Fuel Adjustment Clause pursuant to Commission Rule 20 CSR 4240-20.090(8)(A)2.A.(XI).
EF-2022-0155 **32 MPSC 3d 737**

§104. Electric and power
The Commission found that imprudent energy costs that are recovered through a Fuel Adjustment Clause (FAC) should be adjusted in the FAC, and imprudent Missouri Energy Efficiency Investment Act (MEEIA) costs that are recovered through a Demand-Side Programs Investment Mechanisms (DSIM) should be adjusted through the DSIM.
EO-2020-0227 **32 MPSC 3d 288**

§104. Electric and power
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the

meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§104. Electric and power
The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order did not approve any traditional ratemaking structure for residential customers.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§105. Demand, load and related factors
The Commission found that imprudent energy costs that are recovered through a Fuel Adjustment Clause (FAC) should be adjusted in the FAC, and imprudent Missouri Energy Efficiency Investment Act (MEEIA) costs that are recovered through a Demand-Side Programs Investment Mechanisms (DSIM) should be adjusted through the DSIM.
EO-2020-0227 **32 MPSC 3d 288**

§105. Demand, load and related factors
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§106. Special charges; amount and computation
Because Subscription Pricing, absent other factors, is more likely than not to result in higher bills to customers, the Commission found it would likely result in unjust and unreasonable rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§106. Special charges; amount and computation
In denying a request to re-introduce a streetlighting tariff provision (the Developer Installed Option), the Commission found that the prior elimination of the provision was appropriate due to it being not cost effective to the utility. The Commission also denied an alternate request to limit the Developer Installed Option to only the city of St. Joseph as there was no evidence to support a finding that the difference could be justified.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

§118. Method of allocating costs
Cost-allocation is a discretionary determination frequently delegated to an expert administrative agency such as the Commission. In that regard, the Missouri Court of Appeals quoted approvingly the United States Supreme Court as saying "[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."
ER-2021-0240 **32 MPSC 3d 083**

§118. Method of allocating costs
The Commission found that imprudent energy costs that are recovered through a Fuel Adjustment Clause (FAC) should be adjusted in the FAC, and imprudent Missouri Energy Efficiency Investment Act (MEEIA) costs that are recovered through a Demand-Side Programs Investment Mechanisms (DSIM) should be adjusted through the DSIM.
EO-2020-0227 **32 MPSC 3d 288**

§118. Method of allocating costs
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to

serve the customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§119. Rate design, class cost of service for electric utilities
The Commission has broad discretion when designing rates. The Commission looks to the Class Cost of Service study as one factor, but also considers other factors when determining an appropriate class rate allocation.
ER-2021-0312 **32 MPSC 3d 240**

§119. Rate design, class cost of service for electric utilities
Empire and Missouri Energy Consumer Group‘s analysis show that the residential class is paying somewhat less than its cost-of-service. Yet, Empire is not losing money by providing electric service to the residential class, though Empire is earning less of a return from the residential class than from other classes. This is not surprising because the residential class is the most numerous class and accordingly has a higher cost of service relative to other classes.
ER-2021-0312 **32 MPSC 3d 240**

§119. Rate design, class cost of service for electric utilities
The Commission continues to believe that rates based upon costs is appropriate. The Commission may, in a future rate case, transition all the classes more toward their costs of service. However, the Commission determines that making changes in the way rates are allocated among the classes is not appropriate at this time. Better customer usage data, more certainty about the COVID-19 pandemic and recovery, and potentially lower inflation all make a future rate case a

better vehicle to bring rates and costs more into parity.
ER-2021-0312 **32 MPSC 3d 240**

§119. Rate design, class cost of service for electric utilities
The Commission found that imprudent energy costs that are recovered through a Fuel Adjustment Clause (FAC) should be adjusted in the FAC, and imprudent Missouri Energy Efficiency Investment Act (MEEIA) costs that are recovered through a Demand-Side Programs Investment Mechanisms (DSIM) should be adjusted through the DSIM.
EO-2020-0227 **32 MPSC 3d 288**

§119. Rate design, class cost of service for electric utilities
The Commission found that under specific circumstances, a rate for qualifying high load factor customers that is less than its fully allocated cost that would be determined in a general rate case proceeding, but more than its incremental cost to serve the customer, is just and reasonable within the meaning of Section 393.130, RSMo (2016), and is not unduly or unreasonably preferential.
EO-2022-0061 **32 MPSC 3d 362**

§119. Rate design, class cost of service for electric utilities
The Commission approved multiple time-of-use rates in order to further advance customer choice. The same order did not approve any traditional ratemaking structure for residential customers.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 900**

SECURITY ISSUES

SECURITY ISSUES

No headnotes in this volume involved the question of Security Issues.

SERVICE

SERVICE

§1. Generally

In approving the transfer of a regulated utility's assets, the Commission must determine that the sale is "not detrimental to the public."

WM-2022-0186 **32 MPSC 3d 1044**

§3. Obligation of the utility
The five Tartan criteria are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.
SA-2022-0338 **32 MPSC 3d 501**

§3. Obligation of the utility
The criteria to be used when evaluating applications for utility certificates of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.
WA-2022-0361 **32 MPSC 3d 692**

§3. Obligation of the utility
In approving the transfer of a regulated utility’s assets, the Commission must determine that the sale is “not detrimental to the public.”
WM-2022-0186 **32 MPSC 3d 1044**

§11. Jurisdiction and powers of the State Commission
The Commission must authorize the transfer of a regulated utility’s assets unless the transfer is shown to be detrimental to the public.
WM-2022-0186 **32 MPSC 3d 1044**

§15. Limitations on jurisdiction
The Commission must authorize the transfer of a regulated utility’s assets unless the transfer is shown to be detrimental to the public.
WM-2022-0186 **32 MPSC 3d 1044**

§17. Duty to serve in general
In approving the transfer of a regulated utility's assets, the Commission must determine that the sale is "not detrimental to the public."
WM-2022-0186 **32 MPSC 3d 1044**

§18. Duty to render adequate service
The five Tartan criteria are: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.
SA-2022-0338 **32 MPSC 3d 501**

§18. Duty to render adequate service
The criteria to be used when evaluating applications for utility certificates of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest.
WA-2022-0361 **32 MPSC 3d 692**

§37. Equipment
Missouri-American Water Company changes 5/8" meters, such as Complainant's, every 15 years. This is not because of any statute, Commission rule, or Missouri-American Water Company tariff provision, but because of meter accuracy studies conducted by Missouri-American Water Company. There is no statute, Commission rule, or Missouri-American Water Company tariff provision that requires Missouri-American Water Company to replace meters on a particular schedule.
WC-2021-0129 **32 MPSC 3d 065**

SEWER

SEWER

§2. Certificate of convenience and necessity
The Commission granted Seven Springs Sewer & Water LLC a certificate of convenience and necessity to operate a sewer system for residential customers in Jefferson County, Missouri upon purchase of the system from TUK, LLC.
SM-2022-0131 **32 MPSC 3d 262**

§2. Certificate of convenience and necessity
The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a water system upon purchase of the municipal system from the City of Eureka, Missouri.
WA-2021-0376 **32 MPSC 3d 427**

§2. Certificate of convenience and necessity
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.
SA-2022-0338 **32 MPSC 3d 501**

§2. Certificate of convenience and necessity
The Commission applies the five "Tartan Criteria" established in In the Matter of Tartan Energy Company, et al., 3 Mo. PSC 3d 173, 177 (1994) when deciding whether to grant a new CCN.
SA-2022-0338 **32 MPSC 3d 501**

§2. Certificate of convenience and necessity
Sewer corporations and public utilities are subject to the jurisdiction and supervision of the Commission as provided under Section 386.250, RSMo.
SA-2022-0338 **32 MPSC 3d 501**

§2. Certificate of convenience and necessity
Confluence Rivers Utility Operating Company, Inc. filed an application requesting the Commission grant it a Certificate of Convenience and Necessity to acquire, own, install, construct, operate, control, manage, and maintain a sewer system in Madison County, Missouri.
SA-2022-0299 **32 MPSC 3d 536**

§2. Certificate of convenience and necessity
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." State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).
SA-2022-0299 **32 MPSC 3d 537**

§2. Certificate of convenience and necessity
The Commission granted Confluence Rivers Utility Operating Company, Inc. a certificate of convenience and necessity to operate a water and sewer system for residential customers in Lincoln County, Missouri upon purchase of the system from Glenmeadows Water and Sewer LLC.
WA-2023-0026 **32 MPSC 3d 1018**

§4. Transfer, lease and sale
The Commission granted authority for TUK, LLC to sell to Seven Springs Sewer & Water LLC a sewer system for residential customers in Jefferson County, Missouri.
SM-2022-0131 **32 MPSC 3d 262**

§4. Transfer, lease and sale
The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a water system upon purchase of the municipal

system from the City of Eureka, Missouri.
WA-2021-0376 **32 MPSC 3d 427**

§4. Transfer, lease and sale
The Commission granted permission for Confluence Rivers Utility Operating Company, Inc. to acquire substantially all of the water and sewer utility assets of Glenmeadows Water and Sewer LLC in Lincoln County, Missouri.
WA-2023-0026 **32 MPSC 3d 1018**

§7. Jurisdiction and Powers of the State Commission
Sewer corporations and public utilities are subject to the jurisdiction and supervision of the Commission as provided under Section 386.250, RSMo.
SA-2022-0338 **32 MPSC 3d 501**

§28. Rules and regulations
The Commission may waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) if the moving party files an affidavit stating that it has had no communication with the office of the Commission within the preceding 150 days regarding the subject matter of the application, pursuant to Rule 20 CSR 4240-4.017(1)(D).
SA-2022-0338 **32 MPSC 3d 501**

STEAM

STEAM

No headnotes in this volume involved the question of Steam.

TELECOMMUNICATIONS

TELECOMMUNICATIONS

No headnotes in this volume involved the question of Telecommunications.

VALUATION

VALUATION

§13. Ascertainment of value generally

In calculating the book value of a water system, contributed plant and contributed assets are presumed to be fully depreciated, resulting in a net zero base value for those assets.
WA-2022-0361 **32 MPSC 3d 692**

§14. For rate making purposes

Section 393.320, RSMo 2016, establishes a process for determining the appraised value of a "small water utility" when purchased by a "large water public utility," with the appraised value setting the ratemaking rate base of the acquired small water utility. If the procedures under Section 393.320, RSMo, have been chosen by a large water public utility, those procedures "shall be used by the [Commission] to establish the ratemaking rate base of a small water utility during an acquisition." The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility.
WA-2021-0376 **32 MPSC 3d 428**

§14. For rate making purposes
Although the Commission had concerns about the process used to arrive at the appraised values of municipal water and sewer systems sought to be acquired, assuming the procedures of Section 393.320, RSMo 2016, were followed, the Commission had to use the lesser of the resulting appraised value or the purchase price of the small water utility, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, as the ratemaking rate base added for the acquisition of the small water utility.
WA-2021-0376 **32 MPSC 3d 428**

§26. Property not used or useful
Evergy argues that a certain Purchased Power Agreement (PPA) serves Missouri customers and as such is used and useful. The Commission found that evidence showed it is not needed to meet Missouri customer load, its costs have exceeded revenues in every month of the current rate case test year, and thus, it is not useful to Missouri customers or economic.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§43. Equipment and facilities
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§47. Property not used and useful
The Commission found that although an initial investment may have been prudent when made, that does not support authorizing the Company to continue earning a profit/return

on that investment when the plant in question is no longer used and useful.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§47. Property not used and useful
Replacement of functioning meters with significant remaining life is, without further valid justification, not just and reasonable. Installing an Automated Metering Infrastructure (AMI) shut-off capable (SD) meter for the purpose of installing an AMI-SD meter is not a prudent reason for a meter exchange when the meter being taken out is likely only 7 years into a 20-year depreciable life.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§68. Depreciation generally
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§68. Depreciation generally
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission’s practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§71. Methods of establishing rates or amounts
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave

consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§71. Methods of establishing rates or amounts
The Commission allowed a utility to recover a return of its investment in decommissioning and dismantling costs associated with the retirement of a generation asset. Including the return of these costs supports the Commission's practice of not allowing terminal net salvage values in depreciation rates.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§73. Deduction or addition of funds or reserve
In finding the appropriate net book value of a retired generation asset, the Commission relied on a depreciation study occurring before the retirement which gave consideration to reserve allocation changes prior to the retirement.
ER-2022-0129 & ER-2022-0130 **32 MPSC 3d 901**

§78. Water
Section 393.320, RSMo 2016, establishes a process for determining the appraised value of a "small water utility" when purchased by a "large water public utility," with the appraised value setting the ratemaking rate base of the acquired small water utility. If the procedures under Section 393.320, RSMo, have been chosen by a large water public utility, those procedures "shall be used by the [Commission] to establish the ratemaking rate base of a small water utility during an acquisition." The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking

rate base for the small water utility as acquired by the acquiring large water public utility.
WA-2021-0376 **32 MPSC 3d 428**

§78. Water
Although the Commission had concerns about the process used to arrive at the appraised values of municipal water and sewer systems sought to be acquired, assuming the procedures of Section 393.320, RSMo 2016, were followed, the Commission had to use the lesser of the resulting appraised value or the purchase price of the small water utility, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, as the ratemaking rate base added for the acquisition of the small water utility.
WA-2021-0376 **32 MPSC 3d 428**

§79. Sewer
Section 393.320, RSMo 2016, establishes a process for determining the appraised value of a "small water utility" when purchased by a "large water public utility," with the appraised value setting the ratemaking rate base of the acquired small water utility. If the procedures under Section 393.320, RSMo, have been chosen by a large water public utility, those procedures "shall be used by the [Commission] to establish the ratemaking rate base of a small water utility during an acquisition." The lesser of the purchase price or the appraised value, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, shall constitute the ratemaking rate base for the small water utility as acquired by the acquiring large water public utility.
WA-2021-0376 **32 MPSC 3d 428**

§79. Sewer
Although the Commission had concerns about the process used to arrive at the appraised values of municipal water and sewer systems sought to be acquired, assuming the procedures of Section 393.320, RSMo 2016, were followed, the Commission had to use the lesser of the resulting appraised value or the purchase price of the small water utility, together with the reasonable and prudent transaction, closing, and transition costs incurred by the large water public utility, as the ratemaking rate base added for the acquisition of the small water utility.
WA-2021-0376 **32 MPSC 3d 428**

WATER

WATER

§1. Generally

The Commission ordered notification of a pending rate case within an acquisition case.
WA-2022-0229 **32 MPSC 3d 488**

§2. Certificate of convenience and necessity

The Commission granted Missouri-American Water Company a certificate of convenience and necessity to operate a sewer system upon purchase of the municipal system from the City of Eureka, Missouri.
WA-2021-0376 **32 MPSC 3d 428**

§2. Certificate of convenience and necessity

The Commission ordered notification of a pending rate case within an acquisition case.
WA-2022-0229 **32 MPSC 3d 488**

§2. Certificate of convenience and necessity

The Commission may grant a Certificate of Convenience and Necessity (CCN) to operate after determining that the construction and operation are “necessary or convenient for the public service.” The term "necessity" does not mean

"essential" or "absolutely indispensable," but rather that the proposed project "would be an improvement justifying its cost," and that the inconvenience to the public occasioned by lack of the proposed service is great enough to amount to a necessity.
WA-2022-0229 **32 MPSC 3d 488**

§2. Certificate of convenience and necessity
Section 393.170.2, RSMo (Supp. 2021), requires a water company to have a Certificate of Convenience and Necessity (CCN), which is granted by the Commission, prior to providing service.
WA-2022-0229 **32 MPSC 3d 489**

§2. Certificate of convenience and necessity
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.” State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm’n, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).
WA-2022-0293 **32 MPSC 3d 520**

§2. Certificate of convenience and necessity
Missouri-American Water Company filed applications requesting the Commission grant Missouri-American Water Company Certificates of Convenience and Necessity to acquire, own, install, construct, operate, control, manage, and maintain water and sewer systems in Jasper County, Missouri.
WA-2022-0293 **32 MPSC 3d 521**

§2. Certificate of convenience and necessity
The Commission may grant a water corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either “necessary or

convenient" for the public service.
WA-2022-0361 **32 MPSC 3d 692**

§2. Certificate of convenience and necessity
The Commission has articulated specific criteria when evaluating applications for a Certificate of Convenience and Necessity (CCN) as follows: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. These criteria are known as the Tartan Factors.
WA-2023-0003 **32 MPSC 3d 1008**

§2. Certificate of convenience and necessity
The Commission granted Confluence Rivers Utility Operating Company, Inc. a certificate of convenience and necessity to operate a water and sewer system for residential customers in Lincoln County, Missouri upon purchase of the system from Glenmeadows Water and Sewer LLC.
WA-2023-0026 **32 MPSC 3d 1019**

§2. Certificate of convenience and necessity
A regulated utility must obtain the Commission's authorization before selling or transferring its assets.
WM-2023-0065 **32 MPSC 3d 1032**

§3. Obligation of the utility
A tariff has the same force and effect as a statute, and it becomes law.
WC-2021-0075 **32 MPSC 3d 202**

§4. Transfer, lease and sale
The Commission granted permission for Missouri-American

Water Company to acquire the municipal water system of the City of Eureka, Missouri.
WA-2021-0376 **32 MPSC 3d 428**

§4. Transfer, lease and sale
Section 393.170.2, RSMo (Supp. 2021), requires a water company to have a Certificate of Convenience and Necessity (CCN), which is granted by the Commission, prior to providing service.
WA-2022-0229 **32 MPSC 3d 489**

§4. Transfer, lease and sale
Section 393.190.1, RSMo 2016, requires a water corporation to obtain Commission approval before selling its assets. The Commission may not withhold approval of the sale unless the sale would be detrimental to the public interest (citing State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980)).
WM-2022-0246 **32 MPSC 3d 515**

§4. Transfer, lease and sale
The Commission granted authority for Rex Deffenderfer Enterprises, Inc. d/b/a RDE Water Company to sell its water utility assets in Christian County, Missouri to the City of Nixa, finding the transaction was not detrimental to the public interest.
WM-2022-0246 **32 MPSC 3d 515**

§4. Transfer, lease and sale
Carl R. Mills filed an application for an order authorizing the transfer and assignment of his water system assets to Carriage Oaks Estates Water and Sewer Not-For-Profit (Carriage Oaks).
WM-2022-0144 **32 MPSC 3d 550**

§4. Transfer, lease and sale
The Commission finds that the proposed transfer to Carriage Oaks is not detrimental to the public interest. The Commission will approve the transfer of the water assets for the Mills system to Carriage Oaks.
WM-2022-0144 **32 MPSC 3d 550**

§4. Transfer, lease and sale
The Commission granted permission for Confluence Rivers Utility Operating Company, Inc. to acquire substantially all of the water and sewer utility assets of Glenmeadows Water and Sewer LLC in Lincoln County, Missouri.
WA-2023-0026 **32 MPSC 3d 1019**

§4. Transfer, lease and sale
A regulated utility must obtain the Commission's authorization before selling or transferring its assets.
WM-2023-0065 **32 MPSC 3d 1032**

§8. Jurisdiction and Powers of the State Commission
The Commission has jurisdiction over complaints filed against a regulated utility setting forth violations of any law, rule or order of the Commission.
WC-2021-0075 **32 MPSC 3d 202**

§8. Jurisdiction and Powers of the State Commission
I-70 Mobile City Park has refused to comply with the Commission's order directing it to allow entry onto its property to inspect the water and sewer systems. As provided by statute, that order may only be enforced by action of the circuit court. Therefore, the Commission will direct the general counsel of the Commission to file an action in the appropriate circuit court of this state to seek enforcement of the Commission's Order Granting Staff's Motion to Compel and Denying Respondent's Request for a

Protective Order.
WC-2022-0295 **32 MPSC 3d 545**

§8. Jurisdiction and Powers of the State Commission
Water corporations, sewer corporations, and public utilities are subject to the jurisdiction and supervision of the Commission as provided under Section 386.250, RSMo.
WA-2022-0361 **32 MPSC 3d 692**

§8. Jurisdiction and Powers of the State Commission
The public interest is a matter of policy to be determined by the Commission.
WA-2022-0361 **32 MPSC 3d 692**

§8. Jurisdiction and Powers of the State Commission
It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.
WA-2022-0361 **32 MPSC 3d 693**

§8. Jurisdiction and Powers of the State Commission
A regulated utility must obtain the Commission's authorization before selling or transferring its assets.
WM-2023-0065 **32 MPSC 3d 1032**

§8. Jurisdiction and Powers of the State Commission
The sale or transfer of a water corporation's assets requires authorization from the Commission.
WM-2022-0186 **32 MPSC 3d 1044**

§11. Territorial Agreements
Territorial agreements must be in writing pursuant to Section 247.172, RSMo (2016). The statute requires that approvals of territorial agreements be in the form of a Report and

Order. The statute also provides that territorial agreements must not be detrimental to the public interest.
EO-2022-0143 **32 MPSC 3d 158**

§30. Rules and regulations
The Commission may waive the 60-day notice requirement of Commission Rule 20 CSR 4240-4.017(1) if the moving party files an affidavit stating that it has had no communication with the office of the Commission within the preceding 150 days regarding the subject matter of the application, pursuant to Rule 20 CSR 4240-4.017(1)(D).
WA-2022-0361 **32 MPSC 3d 693**

§31. Billing practices
Respondent providing information showing the exact period during which an alleged overcharge occurred satisfies its obligation to determine the probable period during which conditions existed that may cause billing errors under Commission Rule 20 CSR 4240-13.025(1).
WC-2021-0075 **32 MPSC 3d 203**