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Stipulations 2 and 3

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In the Matter of The Empire District Electric Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of The Company) No. ER-2008-0093

CHERLYN D. VOSS, Presiding,
REGULATORY LAW JUDGE.

JEFF DAVIS, Chairman,
CONNIE MURRAY
ROBERT CLAYTON, III,
TERRY JARRETT,

COMMISSIONERS.

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P R O C E E D I N G S

JUDGE VOSS: We're here today for a presentation of the Stipulation -- or second Stipulation and Agreement as to certain issues and the third Stipulation and Agreement as to certain issues filed by the parties in Commission Case No. ER-2008-0093 In the Matter of the Empire District Electric Company of Joplin, Missouri For Authority to File Tariffs Increasing Rates For Electric Service Provided to Customers in the Missouri -- the Missouri Service Area of the Company.

I guess we will begin with entries of appearance beginning with the company.

MR. MITTEN: Appearing on behalf of the Empire District Electric Company are Diana Carter, Russ Mitten and Dean Cooper.

JUDGE VOSS: Staff?

MR. REED: Steven Reed appearing for the Staff, P.O. Box 360, Jefferson City, Missouri.

JUDGE VOSS: Public Counsel?

MR. MILLS: Lewis Mills.

JUDGE VOSS: General Mills, Praxair and Explorer Pipeline?

MR. WOODSMALL: David Woodsmall. Thank you.

JUDGE VOSS: Department of Natural Resources?

MS. WOODS: Shelley Woods. Thank you.

JUDGE VOSS: And it's my understanding that the witnesses that are local are in the room and that the other witnesses are going to be joining us on a conference call. I know that witnesses for the company have joined us. Is there anyone else that's joined us on the line?

(NO RESPONSE.)

JUDGE VOSS: Can the people that are on the line hear me all right?

MR. MERTENS: Yes, I can.

JUDGE VOSS: All right. Thank you. Are there any -- Commissioner Murray, are you ready? I think questions, I guess, from Commissioner Murray?

COMMISSIONER MURRAY: I'd like to pass at this time.

JUDGE VOSS: Okay. Commissioner Jarrett?

COMMISSIONER JARRETT: I don't have any questions.

JUDGE VOSS: Chairman?

CHAIRMAN DAVIS: No questions.

COMMISSIONER MURRAY: Well, Judge, then

I do have one or two.

JUDGE VOSS: Okay. Commissioner Murray. And Commissioner Clayton may be on his way down, so...

COMMISSIONER MURRAY: And I'm not sure who to address this to, but in the second Stipulation, the section -- section D, "Power supply removing Empire from any liability associated with loss of face on the company's distribution and/or transmission systems," is that language found in other companies' tariffs? And maybe I -- maybe this would be best addressed to Staff. If there's somebody here from Staff that would know that answer?

MR. REED: Direct me to the portion of the stipulation again, Commissioner.

COMMISSIONER MURRAY: It's on page 6 and it's under Rate Design --

MR. REED: Yes.

COMMISSIONER MURRAY: -- referring to section D, Power Supply.

MR. REED: Okay. Yes. And that may be Mr. Watkins from Staff. Let me check, if I could.

JUDGE VOSS: All right. I see he's in the room.

MR. WATKINS: That's not uncommon at

all.

JUDGE VOSS: Could you -- could you come to the microphone?

MR. REED: Shall we -- shall we have him come forward and be sworn?

JUDGE VOSS: Yes.

(The witness was sworn.)

JUDGE VOSS: Please proceed.

MR. WATKINS: These -- these tariff provisions are not at all unusual. The thing -- the thing we want to do is set the rates and -- and build the equipment for sort of your standard customers plus some variation. When you get beyond that, we expect that customer to bear any additional expense, or if he causes damage to the system, to be responsible for that. So no, it's not unusual at all. It appears in -- I think in other rate schedules that they have, but not consistently.

COMMISSIONER MURRAY: All right. Thank you for that. And then just so I'm clear on the rest of the rate design, is this -- and I can't find exactly where it is in the stip, but is this just an equal percentage increase across the classes? Is that -- someone from the company want to answer that or...

MR. WATKINS: I think I can take that one too.

COMMISSIONER MURRAY: Okay.

MR. WATKINS: Basically, it's a two-step proposal. And on a revenue-neutral basis, we're going to initiate a facilities charge which is -- is the big change in the rate design. But -- but once -- and when we do that, the class revenues will remain the same, although it may affect one customer differently than the customer across the street. But for the class, those revenues will remain the same. The second step is any overall increase, then gets applied to the rates equally, all rates.

COMMISSIONER MURRAY: All right. Would you briefly explain the facilities charge?

MR. WATKINS: The facilities charge is designed to collect a portion of the distribution facilities that's closest to the customer. What -- what we're trying to accomplish is to differentiate between those costs that are caused almost entirely by a particular customer as opposed to closer to the generators where those distribution facilities serve a whole group of customers.

And so really, we're trying to collect part of those charges, you know, basically on the --

on the maximum monthly demands as those are farther away from the customer, but collect them on the highest demand to the customer as those facilities are closer to that customer.

COMMISSIONER MURRAY: It's more a cost causer that pays, is that --

MR. WATKINS: Yes, it is.

COMMISSIONER MURRAY: I think that's all the questions I have. Thank you.

JUDGE VOSS: Commissioner Clayton?

COMMISSIONER CLAYTON: Can you just give me a second?

JUDGE VOSS: Yeah.

MR. REED: Can I -- there was something that we wanted to be sure this morning to bring to the Commissioners' attention, so can I make a brief statement about that issue --

JUDGE VOSS: Please proceed.

MR. REED: -- to make sure that we -- we -- we get this out and talk about it if need be? In the second Stipulation and Agreement, you'll see some appendices attached. What we wanted to point out was that the regulatory plan amortization in Empire's last rate case was about $10.1 million -- million, and this amount is included in the revenues and expenses in the Staff and the company's revenue requirement recommendations that you see in appendix A.

So if any additional regulatory plan amortization is found to be reasonable in this case, then that amount would be added to the 10.1 million that is already in the -- those revenue requirement recommendations that you see. In other words, it would be supplemental to -- it would not replace, but it would be in addition to the 10.1 million that is currently in rates.

If you look at appendix c, you'll see Staff's calculation of -- of additional regulatory plan amortizations using in that case Staff's midpoint ROE of 10.26 and the current depreciation rates without any change in depreciation rates. Obviously, if a different ROE were chosen or depreciation rates changed, those numbers would -- would change.

And so on appendix C, the final number that you see for the -- the -- the additional regulatory plan amortizations based upon Staff's calculations is 2.39 million.

I think I've explained that correctly. If I haven't, then we have witnesses here. We wanted to bring that up.

COMMISSIONER CLAYTON: I'm not sure who to ask this. I had questions regarding the regulatory amortizations, specifically paragraph 5. And my confusion stems from questions that I asked probably Mr. Oligschlaeger who is now back, I -- probably the first week when we were discussing the Asbury issue.

Now, in the settlement agreement, the second stipulation in paragraph 5, it says that the additional net balance sheet investment to be included in the calculation of regulatory amortization in this case is 94 -- this is public, right? -- 94.5 million. Say that with some trepidation.

And Mr. Reed has just advised that this will be in addition to the -- the amount of amortizations included in rates from the last rate case which was roughly 10.2 million, Mr. Reed? Is that what you said?

MR. REED: Yes, correct.

COMMISSIONER CLAYTON: So Mr. Oligschlaeger, let me -- or whoever, can I ask either witness?

MR. REED: Mr. Oligschlaeger should have

the answer.

COMMISSIONER CLAYTON: Yeah, I figured you were going to pawn him. So during our discussion last week when we were talking about Asbury, I got the impression that if the Commission decides that it will include the Asbury investment into rate base -- and that's an if, obviously we haven't made that decision -- I got the impression from our discussion on that day that there wouldn't be a need for additional regulatory amortizations. And obviously I've misunderstood because we have a stipulation here. So if somebody could explain that to me and tell me how I've confused the issue.

JUDGE VOSS: Okay. Real quick. Mr. Oligschlaeger, since this is technically a new hearing --

(The witness was sworn.)

JUDGE VOSS: Thank you.

MR. OLIGSCHLAEGER: First of all, as Mr. Reed indicated, the actual amortization calculation result that is attached here as an appendix is the -- reflects the Staff's current case. Now, other parties will have disagreements with that and we're certainly not stipulating that that's the right bottom-line result in any way. This is attached here more as a sample. But because that number reflects the Staff's current case, it does not include the company's Asbury SCR investment in rate base.

I performed some calculations on a what-if basis, and I believe that if the Commission were to ultimately decide to include the SCR investment in rate base, that result would likely eliminate the amortization, all other things being equal, from this case from the Staff's perspective. And that number again in this case would be zero.

COMMISSIONER CLAYTON: All right. So I am not going crazy, which is what I thought, I was going crazy.

Okay. So -- so the amount that is included in this is it's basically an agreed-to amount based on what the Staff's position was at the beginning of the case.

Now, as the Commission decides issues relating to expenses, revenue requirement, rate base, this will be adjusted accordingly depending on how we decide those issues?

MR. OLIGSCHLAEGER: Yes. Let me clarify that a little bit. I mean, what appendix C is -- includes, I think, the parties' settlement positions on the nonrevenue requirement inputs into this calculation. Now, there are also some revenue requirement inputs which the parties are not currently in agreement with and will ultimately have to be trued-up, if you will, to the Commission's ultimate findings.

COMMISSIONER CLAYTON: Okay. Can you point to me on appendix C where Mr. Reed was referencing -- I wasn't able to catch up. I'm very disorganized today. Well, I'm disorganized every day. I'll make that admission.

Where -- where were you talking about the number that would vary depending on what the Commission does on return on equity on appendix C? And as I recall, the -- you -- you increased the ROE and that would basically increase the regulatory amortizations, wouldn't it?

MR. OLIGSCHLAEGER: No. It would decrease it.

COMMISSIONER CLAYTON: It would -- it would decrease it?

MR. OLIGSCHLAEGER: Yes. If you decrease the company's ROE, it will decrease their cash flow because return on equity, except for the pieces associated with tax, is not considered to be a cash item for purposes of this kind of analysis.

COMMISSIONER CLAYTON: Okay. Okay. So I had it backwards. Thank you. Where is that line? Which line on appendix C?

MR. OLIGSCHLAEGER: All right. The numbers that would differ based upon your findings on return on equity would be line 16, Electric Sales Revenue, because that reflects the impact of any rate increase that the Commission were to grant, and if you grant the higher ROE, that will be a higher rate increase, that number will increase.

On the other hand, that will also affect line 26, Federal and State Income Taxes. Because ROE is not tax deductible to the company, they will have to pay additional income taxes. And that line will measure the incremental additional payouts for income taxes associated with your ROE decision. I believe those are the two lines that would be directly impacted.

COMMISSIONER CLAYTON: Okay. Line 35 says, "Amortization 15" -- I don't know if any of these are HC.

MR. OLIGSCHLAEGER: This isn't.

COMMISSIONER CLAYTON: Okay, line -- line 35 says, "Amortization." Is that the same amortization that's being mentioned in paragraph 5 of the second stipulation or is that a different amortization?

MR. OLIGSCHLAEGER: That line includes all of the amortization expense be recommended for recovery for the company in this case. That includes the prior regulatory plan amortization.

COMMISSIONER CLAYTON: Which was the 10.2?

MR. OLIGSCHLAEGER: Yeah, roughly 10.2. That includes the Staff's proposed amortization of ice storm expenses which, just for purposes of this case, have been agreed to be included here. And there are other amortization expenses in the company's case as well. They're all reflected in that line.

COMMISSIONER CLAYTON: Well -- but if 10.2 is from the prior case, then that would suggest that you only have, what, 5.4 in new amortizations?

MR. OLIGSCHLAEGER: Well -- well, it tells you that there are 5.4 million in amortizations in the company's revenue requirements that are not associated with the regulatory plan amortization.

COMMISSIONER CLAYTON: That are -- that are not part of the regulatory plan amortization?

MR. OLIGSCHLAEGER: Well, but obviously -- amortization is a broader term of art.

COMMISSIONER CLAYTON: I recognize that. Ice storm amortization means different than a -- the comprehensive energy plan or the regulatory amortization plan.

MR. OLIGSCHLAEGER: Right.

COMMISSIONER CLAYTON: So you have 10.2 million which is -- which has already been granted by the Commission in a prior case as part of the regulatory amortization plan, correct?

MR. OLIGSCHLAEGER: That is correct.

COMMISSIONER CLAYTON: All right. So you have an amount, you subtract those two numbers, you have $5.4 million. How much of that is the ice storm?

MR. OLIGSCHLAEGER: I believe that's approximately 4 million.

COMMISSIONER CLAYTON: 4 million? And then that would leave a difference of 1.4 million, roughly. Now, is that -- in -- in -- in this document in this stipulation, is that regulatory amortizations or are those amortized or capitalized --

MR. OLIGSCHLAEGER: Those are other

amortizations. I think the single biggest one is an amortization of the company's expense for issuing equity which they did in late 2007.

COMMISSIONER CLAYTON: Okay. Good. All right. That helped. Okay. So you've got like some equity costs, equity issuing costs or something. Okay. Then where are the -- on this sheet on appendix C, where are the regulatory amortizations?

MR. OLIGSCHLAEGER: Well, I think ultimately you go to line 90 on the second page, and that shows you, at least from the Staff's perspective, what the incremental addition to the existing regulatory plan amortization needs to be if the Commission were to accept in entirety of the Staff's revenue requirement recommendations.

COMMISSIONER CLAYTON: Okay. If -- if the Staff's case in its entirety is taken, then there would be an additional 2.39 in -- in amortizations.

Now, that -- how do you get that number, that $2.39 million, how do you get that from paragraph 5 which has additional net balance sheet investment of 94.5 million? Are those correlated -- I mean, they -- one stems from the other, doesn't it?

MR. OLIGSCHLAEGER: Yes. The 94.5 million is actually found on line 5. It's the first actual number on -- on this -- on appendix C.

COMMISSIONER CLAYTON: Okay.

MR. OLIGSCHLAEGER: And if you were to change that number, yes, it would change the amount of the regulatory plan.

COMMISSIONER CLAYTON: So that -- that's basically new additions to rate base, new -- new -- new additions to plant in service?

MR. OLIGSCHLAEGER: No.

COMMISSIONER CLAYTON: Okay.

MR. OLIGSCHLAEGER: What that represents is any other items in Empire's balance sheet that is supported by debt that may not or is not included in Empire's rate base amount because you can find the rate base amount on line 6.

COMMISSIONER CLAYTON: Well, on 6, is that the -- is that rate base figure different than the rate base figure that came out of the last rate case?

MR. OLIGSCHLAEGER: Yes.

COMMISSIONER CLAYTON: So -- so basically, you take the ending balances from the last case, then you'd add in all the new plant that's been put into service?

MR. OLIGSCHLAEGER: Yeah, that's

accurate. I mean, basically, we take this amount from our accounting schedules -- from our rate base accounting schedule, and it reflects any new investment needs since the last case by the company in plant service.

COMMISSIONER CLAYTON: Okay. Okay. And then the 94.5 is the regulatory amortization that would kick into that.

Now, what is the value in terms of rate base addition of the Asbury SCR issue? What is the dollar amount that goes into plant in service? How -- what -- what is that dollar amount that would change line 6?

MR. OLIGSCHLAEGER: Okay.

COMMISSIONER CLAYTON: Do you know and does that question make sense?

MR. OLIGSCHLAEGER: Yes, it makes sense. The value of the Asbury SCR issue, it would be an additional approximately $29 million, I believe, in rate base. Now, I have to add a qualification there.

COMMISSIONER CLAYTON: I figured you would.

MR. OLIGSCHLAEGER: Okay. Line 5, Additional Net Balance Sheet Investment includes, like I indicated, other items supported by debt that are not currently reflected in the Staff's rate base. That would include, among other things, the company's investment and construction work in progress in which a piece of the Asbury SCR investment is in CWIP, okay, or was in CWIP as of 12/31/07.

So if the Commission were to include the Asbury SCR investment in rate base, to avoid double counting, some amount of adjustment would need to be made to line 5 to make sure we're not counting the SCR investment twice.

COMMISSIONER CLAYTON: But it's not a dollar-for-dollar, is it? I mean, the -- the regulatory amortization plan -- I mean, as I learned in one of our other cases, that it's not a dollar-for-dollar swap?

MR. OLIGSCHLAEGER: It's not -- well, in this case it probably would be, or at least -- again -- and this would be subject to discussion among the parties, because, among other things, line 5 is being stipulated to, and I -- what I think might need to be done with it in the future, other parties may or may not agree with it.

COMMISSIONER CLAYTON: Well, let me ask you this question. I mean, if -- if we were to take the three Asbury issues -- now, just work with me on this assumption.

MR. OLIGSCHLAEGER: Sure.

COMMISSIONER CLAYTON: When I say the three Asbury issues, we'd be talking about the rate base addition, the shared -- the depreciation expense that goes with that and the O&M expense. And the O&M expense wouldn't go in this section. And I'm not sure how depreciation would apply to this either. But basically, do we add the 680 million with the 29 million for Asbury, so that figure, that line 6 would be 709,000 and change?

MR. OLIGSCHLAEGER: Yes.

COMMISSIONER CLAYTON: Okay. And then wouldn't you recalculate according to the regulatory plan the credit metrics to re-evaluate -- to figure out what line 5 would be?

MR. OLIGSCHLAEGER: That's what I was addressing.

COMMISSIONER CLAYTON: Yeah.

MR. OLIGSCHLAEGER: There would need to be some adjustment to line 5, in my opinion, based upon my --

COMMISSIONER CLAYTON: But the way you adjust it, do you go back and look at the credit metrics that are set out in the regulatory plan or is

Empire's completely different than how KCPL's was done?

MR. OLIGSCHLAEGER: Well, I think you would try to determine what assumed amount of SCR investment is currently included in line 5, deduct that from line 5 and then add the rate base value to line 6, okay?

COMMISSIONER CLAYTON: Okay. Now, on line 5, how much -- can you identify, I guess, by percentage how much is included in that number that is part of the regulatory amortization plan? Is it 100 percent --

MR. OLIGSCHLAEGER: Well --

COMMISSIONER CLAYTON: -- or do you have other amounts that are built into line 5 other than the regulatory amortization plan?

MR. OLIGSCHLAEGER: Well, just to be clear, line 5 is not -- does not contain a piece of the regulatory plan and amortization.

COMMISSIONER CLAYTON: Okay.

MR. OLIGSCHLAEGER: It is a component. You need to put it in the schedule to ultimately determine what that amortization will be.

COMMISSIONER CLAYTON: I feel like I'm the only one in the room that doesn't know this, looking around the room.

So I guess what I'm trying to get at is this. If the Commission were to place the Asbury SCRs in the rate base, what you started off in this whole conversation is that basically line 90 would become zero, most like -- all things being equal?

MR. OLIGSCHLAEGER: All things being equal, yes.

COMMISSIONER CLAYTON: All things being equal.

MR. OLIGSCHLAEGER: Yes.

COMMISSIONER CLAYTON: So you'd have zero would go to those total amortizations. What I'm trying to get back to is does line 5 also become zero?

MR. OLIGSCHLAEGER: No. Line 5 will not become zero because Empire will always have some balance sheet investment that is supported by debt in theory; that is, will not be reflected in rate base.

COMMISSIONER CLAYTON: Okay. Okay. So this -- I guess, coming full circle, paragraph 5 is designed to accommodate the Commission in its decision whatever it decides to do, and I mean, the regulatory amortization issue may be zero if the Commission takes that Asbury position?

MR. OLIGSCHLAEGER: The incremental result in this case may be zero.

COMMISSIONER CLAYTON: May be zero. Okay. Thank you for your patience.

MR. MILLS: Commissioner, before -- before we leave that topic, can I add to it a little bit?

COMMISSIONER CLAYTON: Please, please. And anyone else who disagrees or has a problem --

MR. MILLS: I hesitate to complicate things further, but it is conceivable that adding in the Asbury plant may actually drive line 90 below zero, in which case you would have to go back and recalculate line 35 to get line 90 to come out to be zero. In other words, you can -- the 10.2 that was awarded in the last case may have to be reduced going forward depending on the results of this calculation.

COMMISSIONER CLAYTON: So if Asbury goes in, it increases rate base, it increases revenue sufficiently that it could unwind the prior grant of amortizations --

MR. MILLS: It could turn out that 10.2 is higher than it needs to be based on the outcome from this case.

COMMISSIONER CLAYTON: Okay. Well, I

mean, that -- that's the whole point.

MR. MILLS: We haven't had a whole lot of discussion among the parties. That's -- that's Public Counsel's position. I don't know whether the other parties agree with that or not.

COMMISSIONER CLAYTON: And that's the whole point, that as you increase rate base, you would decrease the amortizations. I mean, the amortizations are there to deal with the absence of rate base during periods of investment, as I understand it. So that's helpful. Thank you. Thanks. I don't have any other questions on the second stipulation, so I'm done with that.

On the third stipulation, I did have some questions that may have been covered, and I apologize if this is repetitive. But first of all -- and I'm not sure if I'm asking Public Counsel or Staff on the ELIP program. Can somebody just outline this for me and explain the purpose behind how you're addressing this issue? Whoever the person is, Barb or --

MS. MANTLE: Go ahead, Barb.

(The witness was sworn.)

MS. MEISENHEIMER: This would continue the ELIP on and until an evaluation occurred until --

and until the rate case where it would be addressed by the parties according to the outline of -- that's included in the stipulation.

COMMISSIONER CLAYTON: How long has the ELIP program been in existence?

MS. MEISENHEIMER: Many years. Maybe the company knows exactly.

MS. MANTLE: Is Sherry McCormack on the phone?

MS. MCCORMACK: Yes, I am.

MS. MANTLE: What year did ELIP start? Or do you need to swear her in over the phone?

JUDGE VOSS: Out of an abundance of caution, Sherry?

MS. MCCORMACK: Yes.

(The witness was sworn.)

JUDGE VOSS: Thank you. Please proceed.

MS. MCCORMACK: It went into effect in early, I think, May 2003.

COMMISSIONER CLAYTON: May 2003. And -- and hi, this is Robert Clayton, member of the Commission. Can you explain the circumstances in -- in 2003 that -- how it started, the amount that was budgeted and when it was created?

MS. MCCORMACK: I can give you the

details. I was not involved in the original negotiations and development of the program.

COMMISSIONER CLAYTON: Neither was I, so that's okay.

MS. MCCORMACK: Okay. But funding was -- it was originally funded at the level of 300,000 annually with 150,000 coming from ratepayers and 150,000 coming from the shareholders.

COMMISSIONER CLAYTON: And what was the purpose of the program? What was it designed to accomplish?

MS. MCCORMACK: It was to provide bill credits to low income customers on a two-tiered basis with the lower income originally receiving, I believe, $40 per month credit and the upper level receiving $20 per month, I believe. It was just to assist them in meeting their bill payments.

COMMISSIONER CLAYTON: Was that during times of need or was it an ongoing support mechanism?

MS. MCCORMACK: The original program was -- well, this is -- the customers are approved through the cap agencies and it's a low income. They have to -- I don't know the exact details, but their income is based on poverty level. The cap agencies qualify them and then we -- they are approved for one year, and then as long as they continue to meet the requirements, they may currently continue to receive these credits.

COMMISSIONER CLAYTON: And are they required to make a certain amount of payment on the account as well during the -- during their participation in the program?

MS. MCCORMACK: I do not believe there is a requirement of a payment on their part. If they're -- if they have a $20 bill, then the $20 will cover that.

COMMISSIONER CLAYTON: Okay. And then why -- why are there excess funds still in the account or unspent funds?

MS. MCCORMACK: We have not had the level of participation that was originally funded. I'm -- don't know exactly why. I know that -- that I've been told that some elderly do not want to participate because they don't want to take the handout, is the way they perceive it.

COMMISSIONER CLAYTON: Have there been any evaluations of the program in the past?

MS. MCCORMACK: Yes, there was one evaluation. I believe -- I'm getting my years confused here. I believe it was in 2005 -- 2005 or

2006. And then in our last rate case there were some changes made to the program based upon that evaluation.

COMMISSIONER CLAYTON: Okay. Thank you. Thank you. Ms. Meisenheimer, from Public Counsel's position on -- on how these funds will be used, what -- what goal are you trying to address in resolving this issue the way you're doing here?

MS. MEISENHEIMER: In the last case -- in the last rate case, Public Counsel proposed a number of changes to the program that were intended to increase participation which has occurred, to some degree, based on Sherry McCormick's testimony. And do some outreach for the program.

She -- she mentioned that there had been an evaluation performed, and that was performed by Roger Colton. And I talked a little bit about that in the last case. It was a generally positive -- or positive view of the program that indicated that there were some things that needed to be changed. And that was the basis of my recommendations in the last case.

Since that time, it -- we haven't gotten as far along as Public Counsel would like in terms of outreach. The outreach money has not been spent yet, although there has been some increase in participation. We raised an issue in the last case that the funding should be reduced. That was our proposal in the last case. The Commission said, well, we'll send this to the CBC, to the collaborative group, let them determine a new proposal.

We've participated in that process as have all the -- all the parties, DNR. And, of course, the Staff and the company have discussed regularly the need for, you know, what should be done with the program.

And I feel like this resolution that's offered to you in the stipulation allows us to continue on that path, reduces the funding. It is -- is excessive at this point, and it is appropriate that ratepayers get some of that money back. And based on this agreement, ratepayers are getting money back with some interest, so we're pleased to see that.

COMMISSIONER CLAYTON: Okay.

MS. MEISENHEIMER: And it is consistent with our recommendation in the last case.

COMMISSIONER CLAYTON: Okay. And then we'll potentially see this -- see the evaluation and potentially this will come back in the next rate case?

MS. MEISENHEIMER: Yes, and I think it's important for that evaluation to happen before parties make a recommendation about does this program become permanent on a different scale, perhaps, than it is now, is there some alternative proposal.

COMMISSIONER CLAYTON: Okay. Thank you. Ms. Mantle, are you on the energy efficiency collaborative that's referenced --

MS. MANTLE: Do you need to swear me in?

(The witness was sworn.)

MS. MANTLE: Yes. I -- I, along with Henry Warren, often participate in these meetings.

COMMISSIONER CLAYTON: Okay. There's a provision in one of the stipulations that addresses energy efficiency, and in working forward with the collaborative that's been established, am I correct in --

MS. MANTLE: It's in the second stipulation, yes.

COMMISSIONER CLAYTON: And to be consistent -- well, I guess, what I'm trying to get at, are -- are -- are we working forward on energy efficiency issues consistently with what is going on with other utilities? Is Empire ahead, behind on this collaborative?

MS. MANTLE: Empire is a smaller utility and has fewer resources than the big utilities in the state. I -- Sherry McCormack does work steadily and very hard on the energy efficiency programs. I know DNR wished things moved a little faster. I think that's -- we all would, but they are --

COMMISSIONER CLAYTON: I'll tell you what, before you explain your answer, give me an answer and then explain.

MS. MANTLE: Okay.

COMMISSIONER CLAYTON: So are they behind, is that --

MS. MANTLE: I'm -- well, I'm trying to decide while I'm talking to you.

COMMISSIONER CLAYTON: Well, take ten minutes. If you need to stall, I've got another question for Mr. Reed that I can give you a second. That's no problem.

MS. MANTLE: I don't -- for a utility their size, I don't believe they're behind. They are trying and they are putting programs in place.

COMMISSIONER CLAYTON: All right. Well, I under -- I'll -- I understand the qualification.

Just give me -- tell me why they would be behind, though, I mean, if -- if you were to compare them with a larger utility. And don't give me an excuse. I mean, the excuse is about being smaller. I understand that. Just give me an example of why you would think they would be behind if compared to an Ameren, say.

MS. MANTLE: They don't have -- or they aren't spending the resources to outsource a lot of the evalu -- they have outsourced some of the evaluation, but the implementation, the larger utilities will outsource those through IRPs. They just have more --

COMMISSIONER CLAYTON: Outsource what? Outsource --

MS. MANTLE: Even the implementation of the energy efficiency programs.

COMMISSIONER CLAYTON: Okay.

MS. MANTLE: And Empire is attempting to do some of those themselves, although they are working with DNR on those.

COMMISSIONER CLAYTON: Do they have energy -- any energy efficiency programs in place right now?

MS. MANTLE: Yes, they do.

COMMISSIONER CLAYTON: Okay. And it would just be fewer in number and smaller in scale than the larger utilities?

MS. MANTLE: Smaller in scale. They're getting -- well, they're probably ahead of Aquila, so I mean -- as far as, you know, who's where, but they -- they started later than KCPL did, and, like I say, with the resources that they have, they are putting resources into this area and seem to have a commitment to this area which is important in energy efficiency.

COMMISSIONER CLAYTON: Are the goals associated with Empire energy efficiency programs, are they different than they would be for other utilities?

MS. MANTLE: No.

COMMISSIONER CLAYTON: The goals are still the same?

MS. MANTLE: The goals are still the same, yes.

COMMISSIONER CLAYTON: Okay.

MS. MANTLE: There's just fewer customers to reach -- to have impact on, so they won't achieve on an absolute basis the amount of energy savings, but on a percentage basis of the total, they should.

COMMISSIONER CLAYTON: Okay. Does anyone else want to comment on energy efficiency? Anyone? Ms. Meisenheimer, we'll stall for them.

MS. MEISENHEIMER: Just -- just a quick comment. The terms of this Stipulation and Agreement, the third Stipulation and Agreement. A significant portion of the money that was excess, left over from the ELIP program, it will be redirected to offset that regulatory asset which will reduce the pressure on rates in the future of allowing this company to do additional -- additional programs, efficiency programs.

COMMISSIONER CLAYTON: Well, is there an amount of money that's in the case right now that's agreed to on how much will be spent on energy efficiency programs?

MS. MANTLE: There's a demand side regulatory asset account that Empire has where they can place their DSM costs in this account. Then in a rate case --

COMMISSIONER CLAYTON: In subsequent, but I mean, in rates right now, how much is in that account right now? Was that built into rates in this case?

MS. MANTLE: It is in rates, yes.

COMMISSIONER CLAYTON: How -- so how much --

MS. MANTLE: As a regulatory asset account, so they are getting interest on what they have spent as -- just as they would a supply --

COMMISSIONER CLAYTON: Well, but you'd take that eventually and you'd either -- you'd capitalize that or you'd include that account in rates at some point, correct?

MS. MANTLE: It is -- yes, it is in rates.

COMMISSIONER CLAYTON: So there is -- there is a component that's in rates as part of the revenue requirement in this case?

MS. MANTLE: Yes, sir.

COMMISSIONER CLAYTON: And are you able to tell me how much that is in this case, what that dollar amount is?

MS. MANTLE: Amanda McMellen was the Staff -- the auditor that worked with this probably has that number a lot closer in her mind than I do.

(Witness was sworn.)

MS. MCMELLEN: Right now there's about $55,000 in rate base.

COMMISSIONER CLAYTON: In rate base?

MS. MCMELLEN: Uh-huh.

COMMISSIONER CLAYTON: That's not in -- that's not in revenue requirement?

MS. MCMELLEN: Yeah, it's in the actual rate base schedule as part of plant in service and the other items.

COMMISSIONER CLAYTON: So in the revenue requirements, it's 55,000?

MS. MCMELLEN: Uh-huh, correct. And that's --

COMMISSIONER CLAYTON: And how much is this ELIP that we're refunding?

MS. MCMELLEN: 475.

MS. MEISENHEIMER: I think that's a number we can talk about. I think it was -- as of February, it was the 470, 480 range that would be the amount that would be used as an offset to that account. So going forward, there will be a significant amount of equivalent, if you will, that could be used for additional programs as they're developed in the CPC.

COMMISSIONER CLAYTON: So doing it that way, where you basically reduce the amount in an account and then track it on a going-forward basis is preferable to just allocating it to be spent right away, that's preferable?

MS. MEISENHEIMER: This is Ryan Kind's issue for our office, but you know, those programs take time to develop, and that process is occurring, so...

COMMISSIONER CLAYTON: Well, just seeing -- well...

MS. MANTLE: Well, what this will do is reduce the amount of -- that will go into rates in future for DSM costs. More or less this is shareholder money. Whatever would be left over after the Iatan 2 case, that will reduce, then, the amount the ratepayers have to pay. They still will be receiving the programs and the programs will still be implemented, but the ratepayers themselves will be paying less for the programs.

COMMISSIONER CLAYTON: Okay. How about DNR's perspective?

MS. WOODS: DNR is pleased with the stipulation, but if we had our druthers, perhaps the Commission remembers that there were certain goals that Ameren incorporated into their energy efficiency process of how much money they would spend on demand-side management programs, and it's been the department's observation that you have to spend some significant dollars on demand-side management before you actually see reductions in load.

And it would be our -- you know, if everything was a perfect world -- preference to have those goals as part of all of the utilities operations.

COMMISSIONER CLAYTON: Anyone else want to chime in? No? Last question of Staff. I'm looking -- I'm looking at the reconciliation filed by Staff on May 2nd, and I was just going through the line items that have been settled. I believe line 10 -- I think line 9 and 10 have been settled. Can you confirm that, Mr. Reed?

MR. REED: I don't have the reconciliation with me. I don't have it.

COMMISSIONER CLAYTON: Payroll taxes and incentive compensation, payroll annualization and incentive compensation.

MR. REED: Yes, those -- those are in the second stipulation.

COMMISSIONER CLAYTON: That's what I thought. Line 14 is additional bad debt expense on pro forma revenues, that's been settled?

MR. REED: Yes.

COMMISSIONER CLAYTON: So issues that will remain for the Commission to decide will be off-system sales?

MR. REED: Yes.

COMMISSIONER CLAYTON: Return on equity?

MR. REED: Yes.

COMMISSIONER CLAYTON: Line 5 is effective interest synchronization on rate base difference. Is that settled?

MR. REED: I don't know about that.

COMMISSIONER CLAYTON: Do you know, Mr. Oligschlaeger?

MR. OLIGSCHLAEGER: That amount is a fallout of the other rate base issue which is the Asbury SCR.

COMMISSIONER CLAYTON: Oh, that one's connected to Asbury. Got a special color. Line 6 is Asbury. Line 7, cash working capital including offsets. Is that issue still alive or is that a fallout?

MR. OLIGSCHLAEGER: That's more or less a fallout of everything else you decide.

COMMISSIONER CLAYTON: Okay. Fuel and purchased power obviously is a big issue. Payroll taxes is done, payroll annualization is done.

Annualized appreciation expense is still a live issue. Property tax for Asbury is alive. O&M expense for Asbury is alive. Bad debt is settled. Line 15 is impute additional expense for rule compliance, that issue is still alive. Depreciation issue, tax impact, is that a -- that's a dependent issue, isn't it?

MR. OLIGSCHLAEGER: That is a dependent issue. There's several other issues that affect depreciation expense that will affect this.

COMMISSIONER CLAYTON: Yeah. So that's just a --

MR. OLIGSCHLAEGER: That's a fallout.

COMMISSIONER CLAYTON: -- another entry that will come off something else.

MR. OLIGSCHLAEGER: Right.

COMMISSIONER CLAYTON: And then deferred income tax will come off of, what, return on equity or come off of --

MR. OLIGSCHLAEGER: That's another fallout of --

COMMISSIONER CLAYTON: From depreciation or --

MR. OLIGSCHLAEGER: -- primarily depreciation.

COMMISSIONER CLAYTON: Depreciation. Thank you. Okay. When -- on week one when I was asking you some questions, Staff's position on revenue requirement increase at the time of the filing of the reconciliation was 9.68 million. The Asbury issue amounted to 5 -- well, it was around 4.6 million, something like that. So we have that issue to decide. Okay. I'm going to stop. Thank you all very much for your patience.

JUDGE VOSS: Are there any additional questions from the bench?

(NO RESPONSE.)

JUDGE VOSS: Hearing none, go to a few -- regarding testimony in the event the Commission approves stipulations 2 and 3. It's my understanding the parties are going to waive objections to the rest of the exhibits that have been admitted except reserve -- a ruling reserved on. In the event the Commission does not approve the stipulation, I say we'll probably be back here tomorrow morning at 8:30.

The one thing is, I don't believe I have DNR's exhibits offered.

MS. WOODS: I believe that's correct. The department would offer Exhibits 400 and 401, and that would be the direct and the surrebuttal testimony of Brenda Wilbers.

JUDGE VOSS: And the Commission will reserve ruling on those until a ruling on the stipulation, but I'll state for the record that those exhibits will be admitted if the stipulation is approved into the record without a separate ruling. And in the event -- there's a couple late-filed exhibits pending. When those come in, I'll send out a notice and give the parties a certain amount of time to object to those before they're officially admitted into the record.

Are there any other matters that we need to address before we go off the record?

(NO RESPONSE.)

JUDGE VOSS: Hearing none, this concludes the on-the-record presentation of stipulations 2 and 3. Thank you.

(WHEREUPON, the hearing in this case was concluded.)

EXHIBITS INDEX

Pending ruling on stipulation.

CERTIFICATE OF REPORTER

STATE OF MISSOURI)
)ss.
COUNTY OF COLE)

I, PAMELA FICK, RMR, RPR, CSR, CCR #447, within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action to which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

PAMELA FICK, RMR, RPR, CSR, CCR #447