

Issue: Rate Case Timing,  
Asbury Recovery Timing,  
Commitments, Tax Reform  
Witness: Christopher D. Krygier  
Type of Exhibit: Surrebuttal Testimony  
Sponsoring Party: The Empire District  
Electric Company  
Case No. EO-2018-0092  
Date: March 13, 2018

**Before the Public Service Commission  
of the State of Missouri**

**Surrebuttal Testimony**

**Of**

**Christopher D. Krygier**

**March 13, 2018**



**Liberty Utilities®**  
EMPIRE DISTRICT

Empire Exhibit No. 3  
Date 5-09-18 Reporter KF  
File No. EO-2018-0092

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OF  
CHRISTOPHER D. KRYGIER  
THE EMPIRE DISTRICT ELECTRIC COMPANY  
BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. EO-2018-0092

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SURREBUTTAL TESTIMONY  
OF  
CHRISTOPHER D. KRYGIER  
THE EMPIRE DISTRICT ELECTRIC COMPANY  
BEFORE THE  
MISSOURI PUBLIC SERVICE COMMISSION  
CASE NO. EO-2018-0092

1    **I.    INTRODUCTION**

2

3    **Q.    PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4    A.    My name is Christopher D. Krygier and my business address is 602 South Joplin Avenue,  
5           Joplin, Missouri 64801.

6

7    **Q.    HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING**  
8           **BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**  
9           **(“COMMISSION”)?**

10   A.    Yes. I submitted Direct Testimony on October 31, 2017, which addresses the requested  
11           relief associated with the Company’s Customer Savings Plan (“CSP”), the impact of the  
12           CSP on customer rates, and state specific filing requirements for the CSP. My  
13           professional background and qualifications are contained in that prior testimony.

14

15   **Q.    WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

16   A.    My Surrebuttal Testimony is provided in response to portions of the rebuttal testimonies  
17           of the Staff of the Commission (“Staff”), Office of the Public Counsel (“OPC”), Division  
18           of Energy (“DE”), Renew Missouri (“Renew”), and the Midwest Energy Consumers  
19           Group (“MECG”). In particular, I first address the statements regarding rate case

1 assumptions raised by DE witness Hyman, MECG witness Meyer and OPC witness  
2 Mantle. I then respond to Staff witness Oligschlaeger's concerns about Asbury recovery  
3 timing. Next I provide clarity on subsequent regulatory approvals the Company will seek  
4 and then finally close with Empire's response to Renew witness Owen's tax reform  
5 proposal.

6  
7 **II. RATE CASE TIMING**

8  
9 **Q. DID ANY OF THE PARTIES' WITNESSES ADDRESS THE TIMING OF RATE  
10 CASE FILINGS AS THEY MAY RELATE TO THE CSP?**

11 A. Yes, DE witness Hyman (Reb., p. 4), OPC witness Mantle (Reb., p. 5), and MECG  
12 witness Meyer (Reb., p. 11) addressed this issue. In general, all three witnesses  
13 expressed concern around the timing and assumptions of rate cases as it relates to the  
14 CSP. The primary issue they raised was whether the stated savings from the CSP could  
15 be delivered to Empire's customers in the absence of yearly general rate cases.

16  
17 **Q. DO YOU AGREE WITH THEIR VIEW THAT CUSTOMERS COULD NOT  
18 RECEIVE THE SAVINGS IDENTIFIED BY THE CUSTOMER SAVINGS PLAN  
19 ANNUALLY?**

20 A. No, I do not. I believe that savings achieved via the CSP could be flowed back to  
21 customers through either a general rate case and Empire's Fuel Adjustment Clause  
22 ("FAC"), and that between a combination of both, customers would see the savings from  
23 the CSP on an annual basis.

1 **Q. BEFORE EXPLAINING HOW THESE RATE MECHANISMS WOULD WORK,**  
2 **CAN YOU DESCRIBE HOW THE COMPANY'S REVENUE REQUIREMENT**  
3 **WOULD BE IMPACTED BY THE CSP?**

4 A. Yes. There are generally five elements of the Company's revenue requirement that are  
5 impacted by the CSP, which are as follows: 1) Empire's capital investment and operating  
6 expenses associated with acquisition of the wind projects; 2) Empire's recovery of the  
7 Asbury regulatory asset; 3) the savings in operations and maintenance ("O&M") and  
8 other expenses as a result of Asbury's retirement; 4) the savings related to avoided coal  
9 purchases for Asbury, and; 5) revenue from sales of the wind generation assets into the  
10 Southwest Power Pool Integrated Marketplace.

11  
12 **Q. HOW DO THESE FIVE ELEMENTS FIT INTO THE GENERAL RATE CASE**  
13 **AND FAC PROCESS?**

14 A. The following elements would be reflected in the Company's general rate case process:  
15 1) the capital investment and operating expenses associated with acquisition of the wind  
16 projects; 2) the continued recovery of the Asbury regulatory asset; and, 3) the savings  
17 related to the Asbury O&M and related avoided expenses. The first three elements would  
18 be addressed in the first general rate case after the projects are fully operational and used  
19 for service. Said differently, in the first rate case after the projects are in-service, the  
20 revenue requirement associated with the rate base investment and operating expense  
21 amount of the wind assets would be calculated, along with the revenue requirement of the  
22 continued recovery of and on the Asbury regulatory asset and finally, a reduced revenue

1 requirement that reflects reduced expenses with the Asbury plant (since the plant would  
2 no longer have labor, O&M and the like).

3  
4 The other two components, the Asbury coal cost (and associated Asbury SPP revenue)  
5 and wind farm revenue, would be reflected in the FAC process. Since these are fuel  
6 related components, the first FAC filing after the wind projects are placed in-service,  
7 would reflect changes in these two elements. First, the additional revenue generated from  
8 wind farm sales would be passed onto customers. Second, after Asbury is retired, the  
9 elimination of coal expense associated with the Asbury plant would be passed on to  
10 customers as a reduction to FAC costs. In short, both of these elements would be updated  
11 more closely with the wind projects being placed in-service and Asbury retiring,  
12 ultimately reflecting reduced rates for customers.

13  
14 **Q. HOW OFTEN ARE GENERAL RATE CASES REQUIRED TO BE FILED?**

15 A. While I am not a lawyer, it is my understanding that Section 386.266, RSMo and 4 CSR  
16 240-3.161 and 4 CSR 240-3.090, require that those electrical corporations that utilize the  
17 FAC (which Empire does) file a general rate case with the effective date of new rates to  
18 be no later than four years after the effective date of the Commission order implementing  
19 the adjustment mechanism (meaning four years from the date the FAC initially took  
20 effect). This is typically accomplished by filing a rate case every three years with the  
21 fourth year reflecting the typical 11 month period utilized to process a case. It is my  
22 understanding that theoretically, a public utility may file a general rate case at any time it  
23 does not otherwise have a general rate case pending.

1 **Q. HOW OFTEN ARE FAC CASES FILED?**

2 A. Again, while I am not a lawyer, my understanding is that pursuant to 4 CSR 240-3.161  
3 and 4 CSR 240-3.090, companies utilizing a FAC must file updated rates every six  
4 months, with regulatory audits completed in eighteen month increments.

5

6 **Q. WITH THIS BACKGROUND IN MIND, WHAT DID THE COMPANY ASSUME**  
7 **WHEN MODELING THE RATE IMPACTS OF THE CSP?**

8 A. The Company assumed that it would have an initial general rate case to reflect the change  
9 in revenue requirement associated with the elements described above (rate base  
10 associated with acquisition of the wind generation assets, continued Asbury regulatory  
11 asset recovery, and savings from Asbury avoided O&M and related avoided expenses) by  
12 no later than late 2020, the latest statutory date Empire can have new base rates in place  
13 and continue use of the FAC. The Asbury coal savings and wind generation revenue  
14 would be reflected in the Company's first bi-annual FAC filing<sup>1</sup> upon the retirement of  
15 Asbury and placing the wind projects in-service. In short, each future FAC filing will  
16 contain the revenue collected from sales into the Southwest Power Pool ("SPP") market  
17 that will ultimately be passed back to customers in the form of lower fuel and purchased  
18 power expense.

19

20 **Q. CAN YOU PROVIDE AN EXAMPLE AND SHOW HOW CSP SAVINGS**  
21 **WOULD BE FLOWED BACK TO CUSTOMERS OVER A FIVE YEAR**  
22 **PERIOD?**

---

<sup>1</sup> Historically Empire has filed FAC cases in May and November each year.

1 A. Yes. I think the following high level timeline can illustrate the point:

- 2 • April 2019 – Asbury retired.
- 3 • May/November 2019 – FAC reflects savings of coal costs (offset by Asbury
- 4 SPP revenue) no longer being incurred.
- 5 • December 2020 – Wind assets placed in-service.
- 6 • March 2021<sup>2</sup> – New base rates implemented. Rates reflect revenue requirement
- 7 impacts including: rate base of wind assets, O&M associated with wind assets,
- 8 continued recovery on and of an Asbury regulatory asset and revenue
- 9 requirement reduction due to reduction and/or elimination of Asbury expenses.
- 10 • May 2021 – FAC reflects additional revenues due to wind farm sales into SPP,
- 11 ultimately reducing fuel and purchased power expense.
- 12 • November 2021 – FAC continues to reflect additional revenues due to wind
- 13 farm sales into SPP, ultimately benefitting customers.
- 14 • May / November 2022 – beyond – FAC savings continue.

15

16 **III. ASBURY RECOVERY TIMING**

17

18 **Q. WHAT POSITION DOES STAFF WITNESS OLIGSCHLAEGER TAKE IN**

19 **REGARD TO THE REQUESTED REGULATORY ASSET ASSOCIATED WITH**

20 **THE RETIREMENT OF THE ASBURY GENERATION PLANT?**

21 A. Mr. Oligschlaeger states that “Staff is not opposed to Empire’s request for creation of an

22 Asbury regulatory asset in the event that asset is retired within the timeframe assumed in

---

<sup>2</sup> This date is for illustrative purposes and not reflective of proposed rate recovery timing.



1 this application (i.e. 2019). However, this position is contingent on several conditions  
2 proposed by Staff . . . .” (Oligschlaeger Reb., p. 7) Specifically, Mr. Oligschlaeger  
3 outlines two conditions on pages 8 - 9 of his rebuttal testimony. The first condition  
4 surrounds the potential for overearning related to the Asbury regulatory asset<sup>3</sup>. The  
5 second condition relates to future ratemaking treatment.

6  
7 **Q. PLEASE DESCRIBE THE CONDITION RELATED TO POTENTIAL**  
8 **OVEREARNING RELATED TO ASBURY.**

9 A. Staff witness Oligschlaeger states that “Empire should be ordered to reduce its regulatory  
10 asset each month by the full amount of its continued rate recovery of the return of and on  
11 Asbury plant investment up to the point new customer rates are ordered for Empire.”  
12 (Oligschlaeger Reb., p. 8)

13  
14 **Q. WHAT IS THE COMPANY’S RESPONSE TO THIS PROPOSED CONDITION?**

15 A. The Company understands the concerns expressed by Staff witness Oligschlaeger and is  
16 willing to work with Staff to develop the calculations, supporting schedules and  
17 accounting language necessary to implement the condition.

18  
19 **Q. PLEASE DESCRIBE THE SECOND CONDITION PROPOSED BY STAFF**  
20 **WITNESS OLIGSCHLAEGER CONCERNING FUTURE RATEMAKING**  
21 **TREATMENT.**

22 A. Staff witness Oligschlaeger states as follows:

---

<sup>3</sup> MECG witness Meyer makes a similar recommendation in his rebuttal testimony (p. 21-22).

1 ".....Second, Staff recommends that the Commission include language that all  
2 ratemaking findings regarding amounts booked to the Asbury regulatory asset are  
3 reserved to future general rate proceedings. This condition is standard in  
4 accounting authority order cases in which the Commission approves utility  
5 booking of regulatory assets.  
6

7 Q. Should the second condition you list above be interpreted as recommending  
8 that the Commission should not make any rate determinations relating to the  
9 Asbury regulatory asset in this proceeding?  
10

11 A. Yes. Staff is recommending that the Commission only provide approval of  
12 Asbury accounting treatment after its retirement in this case, and not commit to  
13 any specific ratemaking treatment of any unrecovered investment at this time."  
14

15 (Oligschlaeger Reb., p. 7-8)  
16

17 **Q. WHAT IS EMPIRE'S RESPONSE TO THIS PROPOSED CONDITION?**

18 A. The Company understands the rationale behind Mr. Oligschlaeger's position, but as  
19 Empire witness Swain explains in his Surrebuttal Testimony, full recovery on and of the  
20 Asbury net plant balance is critical to the Customer Savings Plan.  
21

22 **IV. COMMITMENTS ON ADDITIONAL COMMISSION APPROVALS**  
23

24 **Q. STAFF WITNESS DIETRICH STATES THAT STAFF IS NOT OPPOSED TO**  
25 **THE GENERAL CONCEPT OF PRE-APPROVAL, "AS LONG AS THE PRE-**  
26 **APPROVAL IS LIMITED TO DECISIONAL PRE-APPROVAL WITH POST-**  
27 **PROJECT REVIEW OF THE COSTS AND TIMELINE TO COMPLETE THE**  
28 **PROJECT." (REB., p. 3) WHAT IS EMPIRE SEEKING FROM THE**  
29 **COMMISSION IN THIS MATTER?**

30 A. Generally speaking, Empire is looking for approval of the regulatory plan described in its  
31 prefiled case in this docket. As described on pages 9-10 of the Company's application,

1 this is somewhat similar to the approach utilized when the Company participated in the  
2 construction of Iatan 2 (Case No. EO-2005-0263). This approach includes a review of the  
3 decision to proceed (decisional prudence); certain accounting treatment related to the  
4 wind projects and retirement of the Asbury generating plant, and; a variance from  
5 affiliate transaction rules, to the extent necessary, in regard to certain specified  
6 agreements that Mr. Mertens described in his Direct Testimony.

7  
8 **Q. STAFF WITNESS DIETRICH FURTHER STATES THAT “IN STAFF’S**  
9 **OPINION, EMPIRE IS SEEKING PRE-APPROVAL OF MORE THAN JUST**  
10 **THE DECISION TO RETIRE ASBURY AND PROCURE WIND ASSETS. (REB.,**  
11 **p. 3) IS EMPIRE SEEKING APPROVAL OF COST RECOVERY FOR THE**  
12 **WIND PROJECTS IN THIS APPLICATION?**

13 A. No. As explained above, the Company expects that cost recovery for the costs to acquire  
14 the wind generation assets would be determined in a general rate case after the wind  
15 projects are fully operational and used for service.

16  
17 **Q. DID STAFF WITNESS DIETRICH OUTLINE FUTURE REGULATORY**  
18 **REVIEWS THAT MAY BE UNDERTAKEN SUBSEQUENT TO THIS**  
19 **APPLICATION?**

20 A. Yes. On page 3 (starting on line 4), Staff witness. Dietrich lays out additional regulatory  
21 reviews that Staff thinks would be necessary. In particular, these are potential  
22 application(s) for a certificate of convenience and necessity (“CCNs”) if the wind

1 generation assets will be located in Missouri, financing matters, and assessment of in-  
2 service criteria.

3

4 **Q. IS EMPIRE WILLING TO MAKE COMMITMENTS IN REGARD TO FUTURE**  
5 **REGULATORY REVIEWS RELATED TO THE CSP?**

6 A. Yes. Empire never envisioned that a Commission approval of this application would  
7 encompass any necessary CCN's or financing approval, for example.

8

9 **Q. WHAT IS EMPIRE'S INTENT IN REGARD TO CCN APPLICATIONS?**

10 A. For CCN's, Empire would commit to the following:

11 *If the Wind Projects are physically located in the state of Missouri, Empire shall*  
12 *file or cause the Wind Projects to file a request for a Certificate of Convenience*  
13 *and Necessity ("CCN") consistent with Commission Rule 4 CSR 240-3.105 before*  
14 *constructing the facilities.*

15

16 **Q. WHAT IS EMPIRE'S INTENT IN REGARD TO FINANCING APPROVALS?**

17 A. For financing, Empire would commit to the following:

18 *If Empire plans to utilize financing (debt or equity) in association with acquisition*  
19 *of the Wind Projects that encumbers its franchise, works or system necessary or*  
20 *useful in the performance of its duties to the public, as described by Section*  
21 *393.190, RSMo, it shall request such authorization.*

22

23 **Q. DO YOU HAVE ANYTHING FURTHER TO ADD ON THIS SUBJECT?**

24 A. Yes. Empire is not opposed to Staff witness Dietrich's recommendation that the  
25 Commission "issue a finding that the Commission has not relinquished its responsibilities  
26 as arbiter in disputes regarding issues such as the prudence of cost expenditures, the

1 siting of the wind projects, the management of the construction of the wind projects, and  
2 whether the wind project is ‘fully operational and used for service.’ (Dietrich Reb., p. 4)

3  
4 **V. TAX REFORM**

5  
6 **Q. WHAT POSITION DO THE PARTIES TAKE ON TAX REFORM?**

7 A. On page 9 (starting on line 6) of his rebuttal testimony, Renew witness Owen  
8 recommends that the Company update its application to include an additional accounting  
9 authority order to record the accounting entries associated with the recently enacted  
10 federal tax legislation (the Tax Cuts and Jobs Act of 2017 (“TCJA”)). MECG witness  
11 Meyer also recommends that if the Asbury regulatory asset is authorized, the balance  
12 should reflect a reduction for the excess deferred income taxes (Reb., p. 22, lines 18-19).

13  
14 **Q. HOW DOES EMPIRE RESPOND TO RENEW WITNESS OWEN’S AND MECG  
15 WITNESS MEYER’S RECOMMENDATIONS?**

16 A. Since the filing of Mr. Owen’s testimony, the Commission has opened File No. ER-2018-  
17 0228, to address TCJA considerations for Empire. Empire is open to discussing how to  
18 address rate issues raised by the TCJA, whether in a general rate or complaint case, the  
19 newly opened case, or, even, in this case.

20  
21 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

22 A. Yes, it does.

