

In the Matter of the Application of Spire)
Missouri Inc. for an Accounting Authority)
Order Concerning Its Commission)
Assessment for the 2019 Fiscal Year)

Case No. GU-2019-0011

Respectfully submitted,

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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Order Concerning Its Commission)
Assessment for the 2019 Fiscal Year)

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INITIAL BRIEF OF STAFF

COMES NOW the Staff of the Missouri Public Service Commission and for its Initial Brief in this matter states as follows:

INTRODUCTION

This case involves the request of Spire Missouri Inc. (“Spire”) for an accounting authority order or tracker to authorize deferred accounting treatment for increases or decreases in its PSC Assessment as compared to its Fiscal Year 2018 PSC Assessment. It should first be noted that Spire’s Application for an Accounting Authority Order and Motion for Waiver (“Application”), filed on July 13, 2018¹, as well as its testimony, conflate accounting authority order (“AAO”) deferrals and tracker mechanisms. As testified by Staff’s witness, Mr. Mark L. Oligschlaeger, “[u]se of an AAO is generally considered only for situations in which a utility incurs costs that are so rare and infrequent that no ongoing rate allowance is normally included in its customer rates for the expense. In contrast, tracker mechanisms are used to measure ongoing differences between the amount of a utility’s actual incurred costs and the amount of rate recovery for that cost.”² Spire’s Application in this case appears to be more in the nature of a request for a tracker mechanism than for a traditional AAO. However, since

¹ EFIS Entry No. 1.

² Oligschlaeger Rebuttal, Ex. 100, p. 13 lines 4-8.

the standards for granting either an AAO or tracker mechanism are similar³, they will be addressed together in this brief.

It should also be noted that Spire's Application which initiated this case – filed on July 13, 2018⁴ -- was filed less than three months after Spire's current rates became effective on April 19, 2018, as a result of the Commission's decision in Case Nos. GR-2017-0215 and GR-2017-0216, which resulted in an overall rate decrease⁵ for Spire. The issue of PSC assessments was not even a contested issue in Spire's recent rate cases;⁶ however, Spire's real complaint is with those recently concluded rate cases. What Spire fails to acknowledge is that it brought this increased assessment on itself through its case filings during the relevant time period, including two major rate cases, as well as its approach to processing those cases.⁷ Spire has no one to blame for the increased assessment but itself.

ARGUMENT

(1) Does Spire Missouri Inc.'s accounting authority order (AAO) / tracker request meet the Commission's expressed criteria for authorizing AAO / tracker deferrals?

Stated quite simply, Spire's request does not meet the Commission's expressed criteria. As the Commission has previously decided – and been affirmed by the court of appeals – the “use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility

³ “The request by KCPL for the “tracking” accounting mechanism is the same as a request for an AAO.” *In the Matter of Kansas City Power & Light v. Missouri Public Service Commission*, 509 S.W.3d 757, 769 (Mo. App. 2016).

⁴ EFIS Entry No. 1.

⁵ Weitzel Direct, Ex. 1, p. 3 lines 6-8.

⁶ Tr. 66.

⁷ Oligschlaeger Rebuttal, Ex. 100, p. 9.

has to operate efficiently and productively under the rate regulation approach employed in Missouri.”⁸ Accordingly, the Commission has adopted certain criteria for granting deferral accounting authority, which has been approved by the court. The Commission’s expressed criteria are: (1) that the costs pertain to an event that is extraordinary, unusual and unique, and not recurring; and (2) that the costs associated with the event are material.⁹ The yardstick generally used by the Commission to measure materiality of a cost proposed for deferral treatment is whether the cost in question is at least 5% of the utility’s net income.¹⁰ However, the materiality prong of the criteria is a secondary consideration – whether an event or transaction is extraordinary is the primary consideration.¹¹

The Commission has applied the foregoing standard in several decisions. For example, in *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, Case No. ER-2014-0370 *et al.*¹², Kansas City Power & Light Company (“KCPL”) sought trackers for transmission fee expense, property tax expense, and CIP/cyber-security expense. Regarding KCPL’s transmission fee tracker request, on page 51 of its Report and Order in that case, the Commission found that the “broad use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri,” and even though

⁸ *In the Matter of Kansas City Power & Light v. Missouri Public Service Commission*, 509 S.W.3d 757, 769 (Mo. App. 2016).

⁹ *Id.*

¹⁰ Oligschlaeger Rebuttal, Ex. 100, p. 11 lines 4-6.

¹¹ *Id.* at p. 10 lines 14-18.

¹² *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service*, Case No. ER-2014-0370 *et al.*, Report and Order issued September 2, 2015.

KCPL's transmission costs had increased over the past several years, found that "KCPL's transmission costs are normal, ordinary and recurring operating costs, and not extraordinary." On page 54 of the same Report and Order, under its Conclusions of Law and Decision, the Commission found that "[t]he evidence presented in this case showed that KCPL's transmission costs, while having increased in recent years, are normal, ordinary and recurring operation costs. These **recurring costs are not abnormal or significantly different from the ordinary and typical activities of the company, so they are not extraordinary and, therefore, not subject to deferral** under the USoA [Uniform System of Accounts]." (Emphasis added) The Commission accordingly denied KCPL's request for a transmission fee tracker.

Regarding KCPL's property tax tracker request, on page 55 of its Report and Order, even though the Commission found that "KCPL's property tax expenses have been increasing for the last five years, and may continue to increase in the future," the Commission found that "Property taxes are normal operating costs that will continue to occur every year, and an annualized level of such expenses to include in rates can be reasonably calculated. KCPL's property taxes are not rare or unusual." On page 56 KCPL's request for a property tax tracker was denied because it was not demonstrated that the projected property tax increases were extraordinary. On page 58 of the Report and Order the Commission also denied KCPL's request for a CIP/cyber-security expense tracker as not being extraordinary.

KCPL appealed the foregoing Commission Report and Order to the Western District Court of Appeals, which affirmed the Commission's decisions on all of the tracker issues.¹³ In its opinion, the court stated as follows¹⁴:

The PSC denied KCPL's request to use tracking mechanisms as to each of these categories of expenses. This is the subject of KCPL's Point Three on appeal, considered first, in which KCPL claims the PSC erred in denying its request for a "tracker" accounting deferral mechanism because the legal conclusion by the PSC that only "extraordinary" items could be deferred as regulatory assets is unlawful and unreasonable because it is contrary to the Uniform System of Accounts ("USOA"), adopted by the PSC, because the USOA does not require that revenues, expenses, gains or losses be "extraordinary" in order to be deferred as a regulatory asset or liability.

The PSC has the power, pursuant to section 393.140(4), to prescribe uniform methods of keeping accounts. The PSC has adopted a rule that requires utilities to use the USOA to maintain their books and records. See 4 CSR 240–20.030. KCPL's arguments regarding the USOA and its alleged right to use a tracking accounting deferral mechanism completely ignore that the PSC's decision that only extraordinary expenses should be allowed such treatment is a policy decision that has been made by the PSC and is not dictated by whether, in the abstract, the USOA provides a mechanism to defer costs, whatever the type. The PSC has decided that the "use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri." The manager of the PSC's auditing unit testified that the PSC will issue accounting authority orders ("AAOs"), which serve to allow a utility to deviate the normal method of accounting for certain expenses, most often associated with "extraordinary" events. The request by KCPL for the "tracking" accounting mechanism is the same as a request for an AAO, as it seeks to book a particular cost, normally charged as an expense on a utility's income statement in the current period, to the utility's balance sheet as a regulatory asset or regulatory liability. The manager testified that the PSC:

in prior cases has stated that the standards for granting the authority to a utility to defer costs incurred outside of a test year as a regulatory asset are: 1) that the costs pertain to an

¹³ *In the Matter of Kansas City Power & Light v. Missouri Public Service Commission*, 509 S.W.3d 757 (Mo. App. 2016).

¹⁴ *Id.* at 769.

event that is extraordinary, unusual and unique, and not recurring; and 2) that the costs associated with the event are material.

In deciding that only extraordinary costs qualify for deferral, the PSC has followed the USOA's guidance that "it is the intent that net income shall reflect all items of profit and loss during the period." 18 C.F.R. Part 101, General Instruction 7. An exception to this general rule is for "extraordinary items" as defined by the USOA. (Emphasis added)

The Commission's Report and Order in *In the Matter of the Application of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for the Issuance of an Accounting Authority Order relating to their Electrical Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)*, Case No. EU-2014-0077¹⁵ reached a similar result. In that case, the companies had requested an AAO to track transmission costs associated with membership in the SPP and other transmission providers. After stating that the companies carry the burden of proof and must show by a preponderance of the evidence that they are entitled to the requested AAO¹⁶, the Commission found that

Transmission expenses are part of the ordinary and normal costs of providing electric service by a utility and are ongoing. Transmission costs fluctuate due to load variations, but are escalating on an annual basis. The expansion of SPP's regional projects and the potential funding required by SPP's members has been known for some time. The transmission cost environment faced by Companies is the norm for electric utilities within SPP and in other regions. Companies' transmission expenses are not extraordinary.¹⁷

¹⁵ *In the Matter of the Application of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for the Issuance of an Accounting Authority Order relating to their Electrical Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)*, Case No. EU-2014-0077, Report and Order issued July 30, 2014.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 8.

In its Conclusions of Law the Commission concluded that:

In Missouri, rates are normally established based off of a historic test year. The courts have stated that an AAO allows the deferral of a final decision on current *extraordinary* costs until a rate case and therefore is not retroactive ratemaking. Consistent with the language in General Instruction No. 7, the Commission has evaluated the transmission costs for which Companies seek an AAO to determine if they are an unusual and infrequent occurrence. The Commission concludes they are not.

Companies began incurring transmission expenses when they began providing retail electric service. Transmission costs are part of the ordinary and normal costs of providing electric service and are expected to continue in the foreseeable future. Furthermore, while the transmission costs at issue may have a significant effect on Companies, they are not “abnormal and significantly different from the ordinary and typical activities” of the Companies. The increase in transmission costs was anticipated and is indeed the norm for all electric utility members of SPP. Therefore, the transmission costs are not extraordinary.¹⁸

The Commission reached a similar result in *In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis County and Platte County*, Case No. WU-2017-0351,¹⁹ when Missouri-American Water Company (“MAWC”) sought an AAO for an increase in its property taxes. In that case, the Commission found that “Property taxes are an annual recurring expense for utilities”²⁰ and “Increases in property taxes are not unusual or nonrecurring.”²¹ The Commission also found in both its Findings of Fact and Conclusions of Law that “for accounting purposes, the consistent meaning of an extraordinary item is an event that is considered unique, unusual and nonrecurring.”²²

¹⁸ *Id.* at 10.

¹⁹ *In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis County and Platte County*, Case No. WU-2017-0351, Report and Order issued December 20, 2017.

²⁰ *Id.* at 5.

²¹ *Id.* at 11.

²² *Id.* at 15; see also 12-13.

In its Decision, the Commission stated:

However, the issue before the Commission is not whether it is prudent to pay property taxes. **The issue is whether the increase in MAWC's property taxes to the Counties for 2017 and the beginning of 2018 resulted from an event that would be considered "unusual" or "extraordinary" under NARUC USOA.** That is to say, did the Counties' implementation of a different standard for assessing MAWC's property taxes cause an unusual, unique and nonrecurring event worthy of exceptional treatment? For the following reasons, **the Commission finds they do not.**

There is nothing unusual or extraordinary about paying property taxes to warrant an AAO. It is a recurring expense. MAWC counters that while the duty to pay property tax is not unusual, the level of increase in property tax and the actions by the Counties are the nonrecurring, unusual, and unique events. (Emphasis added)²³

The Commission further stated as follows:

Some may argue that absent the Company timing the filing of a general rate case to include a known increase of property taxes, MAWC will unfairly incur an additional cost that it cannot recover in rates. While this is true, there are always increases and off-setting decreases in other costs that are not reflected in current rates. That is why the General Instructions for NARUC USOA indicates the intent should be for net income to reflect all items of profit and loss during the period. MAWC is requesting the Commission single out one increased expense for special deferred treatment without consideration for other items of profit or loss. This Commission recently denied Kansas City Power & Light Company's request to do that exact thing with a tracker for increased property tax expense.

When KCP&L appealed, the Court upheld the Commission's decision. Pointing out that a tracker is similar to an AAO in that it allows a utility to deviate from the normal method of accounting, the Court found the Commission appropriately determined the use of trackers should be limited since they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentive for a utility to operate efficiently.²⁴

²³ *Id.* at 15.

²⁴ *Id.* at 18.

The Commission denied MAWC's AAO request, as it had previously denied KCPL's referenced tracker request.

In the present case, Spire is requesting an AAO or tracker mechanism to authorize deferred accounting treatment for increases (or decreases) in its PSC Assessment. Spire points to the increase in its most recent assessment as compared to its prior assessment as the justification for its request. However, this is precisely the type of request – an increase in an annual, long-standing, recurring cost – which was denied in the cases quoted above.

Spire asserts that the increase in its Fiscal Year 2019 assessment compared to its Fiscal Year 2018 assessment is so large it should be considered “extraordinary” and thus subject to AAO deferral treatment;²⁵ however, as shown by the cases quoted above, this is not the criteria or “test” for being considered “extraordinary.” Rather, the underlying cost itself – in this case, the PSC assessment – must be unusual, unique and not recurring in order to be considered extraordinary. Commission assessments are in no way unusual, unique or not recurring; rather, assessment expense is very much of a routine and ongoing nature and is not associated with the type of rare and unanticipated events, such as natural disasters, for which AAOs are used.²⁶ As testified by Mr. Oligschlaeger:²⁷

At page 8 of his direct testimony, Mr. Weitzel quotes the FERC USOA as stating that extraordinary items are those that are “of unusual nature and infrequent occurrence,” and that extraordinary events are “abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.” **Commission Assessment amounts have been billed to and paid by utilities for many years on a set schedule. This**

²⁵ Oligschlaeger Rebuttal, Ex. 100, p. 7 lines 12-15.

²⁶ *Id.* at lines 19-21.

²⁷ Oligschlaeger Rebuttal, Ex. 100, p. 8 lines 4-12.

process is obviously “usual,” “ordinary,” “typical,” “normal” and “recurring” from the perspective of Missouri utilities. The FERC USOA provides no support for Spire Missouri’s attempt to label its Commission Assessment expenses as extraordinary in nature. (Emphasis added)

Mr. Oligschlaeger also explained that the primary reason for the increase in assessment was a significant increase in natural gas case activity before the Commission, due in large part to Spire’s decision to file two general rate cases (GR-2017-0215 and GR-2017-0216) in April 2017, as well as the contentious and time-consuming nature of these two major cases.²⁸ Therefore, Spire should have known it was likely to face a significant increase in its PSC assessment, and was in large part responsible for such increase.²⁹

The Commission’s other expressed criteria for authorizing AAO / tracker deferrals – whether the costs associated with the event are material – is a secondary consideration; whether the event or transaction is extraordinary is the primary consideration.³⁰ As shown above, PSC assessments are clearly not extraordinary. In addition, the increase in Spire’s PSC assessment fails to meet the “materiality” standard. “The ‘yardstick’ generally used by the Commission to measure materiality of a cost proposed for deferral treatment is whether the cost in question is at least equal to 5.0% of the utility’s net income.”³¹ Even Spire admits that the increase in its assessment fails to meet this standard.³² Instead, Spire attempts to argue that the amount of the increase in its assessment is so large, *i.e.*, “material,” as to justify a

²⁸ Oligschlaeger Rebuttal, Ex. 100, p. 8 line 13 through p. 9 line 9.

²⁹ *Id.* at p. 9 lines 10-22.

³⁰ *Id.* at p. 10 lines 14-18.

³¹ *Id.* at p. 11 lines 4-6.

³² *Id.* at p. 11 lines 6-8.

finding that the cost is “extraordinary.” However, as shown in detail above, such an argument is inconsistent with the Commission’s court-approved criteria.³³

In summary, the Commission’s expressed, court-approved criteria are: (1) that the costs pertain to an event that is extraordinary, *i.e.*, unusual and unique, and not recurring; and (2) that the costs associated with the event are material. The yardstick generally used by the Commission to measure materiality of a cost proposed for deferral treatment is whether the cost in question is at least 5% of the utility’s net income. However, the materiality prong of the criteria is a secondary consideration – whether an event or transaction is extraordinary is the primary consideration. Spire’s request for an AAO / tracker mechanism meets neither of these established criteria, and as a result, Spire’s AAO / tracker request should be denied in its entirety.

(A) Is the increase in the Commission Assessment billed to Spire Missouri Inc. in Fiscal Year 2019 an extraordinary event, as defined by past Commission criteria?

This issue is also discussed in some detail under the issue set forth as number (1) above, and Staff would refer the Commission and RLJ to that issue for further argument and explanation on this issue.

The increase in Commission assessment billed to Spire is not an “extraordinary” event as defined by past Commission criteria. Commission assessment amounts have been and continue to be billed to and paid by utilities annually on a regular schedule. The Commission has previously found that the primary question for considering whether to grant an AAO for a particular cost is whether the underlying event giving rise to the

³³ *Id.* at p. 10 lines 10-14.

cost is “extraordinary” in nature – i.e., unusual, unique and non-recurring. The Commission has also found that tracker treatment should only be given to costs that are extraordinary in nature. Spire’s Fiscal Year 2019 Commission assessment results from ordinary and ongoing practices. Since the underlying event (the assessment) behind the cost at issue (the increase in assessment) is not extraordinary in any way, the inquiry can end there without consideration of the materiality of the cost, as materiality is not the primary consideration in determining whether to grant an AAO or tracker.³⁴

Spire’s argument focuses on the increase, rather than on the underlying cost itself, in an attempt to bootstrap its way to “extraordinary,” by arguing that the amount of the increase in its assessment is so large, *i.e.*, “material,” as to justify a finding that the cost is “extraordinary.” However, as shown in detail under issue (1) above, such an argument is inconsistent with the Commission’s court-approved criteria.

In addition, Spire’s argument – focusing on the increase in an annual, recurring cost, rather than the underlying cost itself – is precisely the argument which was rejected in the cases quoted under issue (1) above. For example, in denying the request of Missouri-American Water Company for an AAO for an increase in its property taxes, the Commission found that “Property taxes are an annual recurring expense for utilities”³⁵ and “Increases in property taxes are not unusual or nonrecurring.”³⁶ The Commission also found in both its Findings of Fact and Conclusions of Law that “for accounting purposes, the consistent meaning of an extraordinary item is an event that is

³⁴ Oligschlaeger Rebuttal, Ex. 100, p. 8 lines 1-12; p. 10 lines 10-23; p. 13 lines 17-19.

³⁵ *In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis County and Platte County*, Case No. WU-2017-0351, Report and Order issued December 20, 2017, at p. 5.

³⁶ *Id.* at 11.

considered unique, unusual and nonrecurring.”³⁷ In its Decision in the *MAWC* case, the Commission stated:

However, the issue before the Commission is not whether it is prudent to pay property taxes. **The issue is whether the increase in MAWC’s property taxes to the Counties for 2017 and the beginning of 2018 resulted from an event that would be considered “unusual” or “extraordinary”** under NARUC USOA. That is to say, did the Counties’ implementation of a different standard for assessing MAWC’s property taxes cause an unusual, unique and nonrecurring event worthy of exceptional treatment? For the following reasons, **the Commission finds they do not.**

There is nothing unusual or extraordinary about paying property taxes to warrant an AAO. It is a recurring expense. MAWC counters that while the duty to pay property tax is not unusual, the level of increase in property tax and the actions by the Counties are the nonrecurring, unusual, and unique events. (Emphasis added)³⁸

If you simply change “property taxes” to “PSC assessment” in the foregoing quotations, you have a nice summation of the present case:

- PSC assessments are an annual recurring expense for utilities
- Increases in PSC assessments are not unusual or nonrecurring
- There is nothing unusual or extraordinary about paying PSC assessments to warrant an AAO. It is a recurring expense.

As testified by Mr. Oligschlaeger, since the underlying event (the assessment) behind the cost at issue (the increase in assessment) is not extraordinary in any way, the inquiry can end there without consideration of the materiality of the cost.³⁹ The increase in Commission assessment billed to Spire is not an “extraordinary” event as defined by past Commission criteria, and Spire’s request should therefore be denied.

³⁷ *Id.* at 15; *see also* 12-13.

³⁸ *Id.* at 15.

³⁹ Oligschlaeger Rebuttal, Ex. 100, p. 10 lines 19-23.

(B) Is the increase in the Commission Assessment billed to Spire Missouri Inc. in Fiscal Year 2019 of a material nature?

This issue is also discussed in some detail under the issue set forth as number (1) above, and Staff would refer the Commission and RLJ to that issue for further argument and explanation on this issue.

The increase in Commission assessment billed to Spire is clearly not of a material nature. Spire's argument simply compares its Fiscal Year 2019 assessment to its Fiscal Year 2018 assessment. The standard generally used by the Commission to determine materiality of a cost proposed for deferral treatment is whether the cost in question (in this case, the increase in assessment) is at least equal to 5% of the utility's net income.⁴⁰ Even Spire admits that its request does not meet this standard.⁴¹ In fact, at the hearing Spire admitted that it was not even close to meeting the 5% standard, and admitted that the increase in Spire's assessment is closer to 1% than 5%.⁴²

The increase in Spire's assessment is not material; Spire's request does not meet this secondary consideration of the Commission's criteria, much less the primary consideration⁴³; and Spire's request should be denied.

CONCLUSION

As set forth above, Spire's request in this case for an AAO / tracker fails to meet the Commission's previously expressed and court-approved criteria for authorizing AAO / tracker deferrals; the increase in PSC assessment billed to Spire in Fiscal Year 2019 is not an extraordinary event as defined by past Commission criteria and

⁴⁰ Oligschlaeger Rebuttal, Ex. 100, p. 11 lines 1-8.

⁴¹ Weitzel Direct, Ex. 1, p. 8 line 31 through p. 9 line 1; Tr. 14.

⁴² Tr. 14.

⁴³ The materiality prong of the criteria is a secondary consideration – whether the event or transaction is extraordinary is the primary consideration.

approved by the court; and the increase in the PSC assessment billed to Spire in Fiscal Year 2019 is not of a material nature. As a result, Spire's AAO / tracker request should be unequivocally denied in its entirety by the Commission.

WHEREFORE, for the reasons set forth herein, Staff prays that the Commission will issue an order finding in its favor on each issue in this case and denying Spire Missouri Inc.'s accounting authority order / tracker request, and granting such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 28th day of December, 2018.

/s/ Jeffrey A. Keevil