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Missouri Public Service Commission

GU-2019-0011
Spire Regulatory Assessment AAO

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Four Topics

- Derivation of the "extraordinary" Standard.
- Ratemaking logic for applying the "extraordinary" standard.
- Applying the "extraordinary" standard to evidence in this case.
- Is the regulatory assessment increase "material"?

MECG Exhibit No. 300
Date 12-11-18 Reporter TU
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Derivation of "Extraordinary" standard UCCM Case

- "The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e., the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established. ***Past expenses*** are used as a basis for determining what rate is reasonable to be charged in the future in order to avoid further excess profits or future losses, but under the prospective language of the statutes, §§ 393.270(3) and 393.140(5), they ***cannot be used to set future rates to recover for past losses due to imperfect matching of rates with expenses***."

  UCCM v. Public Service Commission, 585 S.W.2d 41, 59 (Mo. Banc 1979)

Derivation of "Extraordinary" standard Sibley Commission Decision

- "The Commission does not consider the granting of the deferrals of extraordinary items either single-issue or retroactive ratemaking as argued by Public Counsel. Retroactive ratemaking occurs when rates are set to recover for past deficiencies or to refund past excesses. . . The deferrals approved in Case No. EO-91-358 do not constitute retroactive ratemaking since they involve items which have been found to be extraordinary and therefore outside the current period match of revenues and expenses. Costs associated with extraordinary events such as losses, cancellations or service threatening timing differences have been authorized by the Commission."

  Case No. EO-91-358, *Report and Order*, issued December 20, 1991 (1 Mo.PSC 3d 200, 212-213).

Derivation of "Extraordinary" standard Sibley Appellate Decision

- "The Commission's decision to grant authority to defer the costs associated with the Sibley reconstruction and coal conversion projects by recording the costs in Account No. 186 was the result of the Commission's determination that the construction projects were unusual and nonrecurring, and therefore, extraordinary. The Commission determined the projects to be unusual because of their size and substantial cost. The Commission expressed that deferral of costs just to support the current financial status distorts the balancing process utilized by the Commission to establish just and reasonable rates. ***Because rates are set to recover continuing operating expenses plus a reasonable return on investment, only an extraordinary event should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period***."

  State ex rel. Office of Public Counsel v. Public Service Commission, 858 S.W.2d 806, 811 (Mo.App. 1993)

Derivation of "Extraordinary" standard KCPL Commission Decision

- "The 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***. The Commission concludes that KCPL has not met its burden of proof to demonstrate that projected transmission cost increases are extraordinary, so its request for a transmission tracker will be denied."

  Case No. ER-2014-0370, *Report and Order*, issued September 15, 2015, page 54.

Derivation of "Extraordinary" standard KCPL Appellate Decision

- "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. . . ***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***. . . [W]e will not second-guess the PSC's reasoned decision that only extraordinary items may qualify for deferral treatment."

In re: Kansas City Power & Light Company, 509 S.W.3d 757 (Mo.App. 2016).

Derivation of "Extraordinary" standard

- Utilities have attempted to eliminate the "extraordinary" standard.
- 2017 Extraordinary Session: Senate Bill 6 would have provided statutory authority for trackers and deferral accounting without the extraordinary standard.
- 2018 Regulatory Session: House Bill 2058 would have provided similar statutory authority.
- Neither bill passed.

Ratemaking Logic of "Extraordinary" Standard

- Ratemaking looks at ordinary expenses and revenues. These are normalized and annualized to give a picture of going-forward operations. Non-recurring expenses are excluded. Thus, current rates would not include costs associated with floods, ice storms, tornados and other non-recurring expenses.

Ratemaking Logic of "Extraordinary" Standard

- Since rates normally would not include such "extraordinary" costs, the Commission developed an alternative method for providing recovery of such costs. Starting in 1991, the Commission started granting Accounting Authority Orders to allow for deferral of these extraordinary costs.
- This is consistent with Sibley Court decision: "***Because rates are set to recover continuing operating expenses plus a reasonable return on investment, only an extraordinary event should be permitted to adjust the balance to permit costs to be deferred for consideration in a later period***."

Ratemaking Logic of "Extraordinary" Standard

Uniform System of Accounts General Instruction No. 7

- "It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments....***Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be extraordinary items.*** Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future."

Application of "Extraordinary" Standard

- "Commission Assessment expense is very much of a routine and ongoing nature, and is not associated with the type of rare and unanticipated events (for example, natural disasters) for which AAOs are commonly used. . . Commission Assessment amounts have been billed to and paid by utilities for many years on a set schedule. This process is obviously 'usual', 'ordinary', 'typical', 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."

  Oligschlaeger Rebuttal, page 3.

Application of "Extraordinary" Standard

- "The PSC / OPC assessment is a recurring annual assessment paid by regulated utilities. . . Section 386.370 RSMo has provided for the Commission to collect the annual assessment since July 1, 1947 and there is no indication this will cease in the foreseeable future."

  Roth Rebuttal, page 6.

Materiality?

- "Mr. Weitzel admits at pages 8 and 9 of his direct testimony that the increase in Spire Missouri's fiscal year 2019 Commission Assessment does not meet this standard."

  Oligschlaeger Rebuttal, page 11.
- "In response to OPC's data request 1101, Spire responded that the Company is using total income for 12 months ending June 2018 of $141.8 million to calculate whether Spire's request for an AAO meets FERC's 5% of income threshold. Five percent of $141.8 million is approximately $7.1 million. Spire's annual assessment for fiscal year 2019 is only $4,904,390.63, and the increase in assessment from that used to set rates is $1,440,278.15, or 1% of income."

  Roth Rebuttal, page 7.