

5. However, finding of fact 340, upon which the above decision was based, suggested erroneously that the cited \$8,133,625 represented the “O&M expenses for Riverton 12.” *Report and Order*, p. 123. It did not. The \$8,133,625 represented the O&M expenses for all Riverton units, which includes more than just Riverton 12.

6. Empire believes that the correct amount of O&M expenses for Riverton 12, after use of Staff’s three-year average, is \$7,478,634, prior to applying jurisdictional allocations. It should be noted the determination of the Riverton 12 O&M expenses will not have an impact on the overall cost of service within this case, as the \$8,133,625 that represents the O&M for all Riverton units will be used for the cost of service. The Riverton 12 O&M expenses will instead have significance in regard to the tracking of future Riverton 12 O&M expenses.

Allowance for Funds Used During Construction (“AFUDC”) - Issue 9

7. This issue concerns the appropriate metric for Empire to use for AFUDC. The Commission, after consideration of the treatment it should give a certain \$90 million note, decided as follows:

. . . for the purpose of the AFUDC calculation, the \$90 million note should be treated as short-term debt. The Commission finds that the appropriate cost of debt for Empire’s \$90 million note should have been 2.15 percent and not 4.53 percent. The Commission does not find Empire’s argument persuasive that the AFUDC calculation should be based on the “actual book balances” in situations where Empire’s financing was not in compliance with the Affiliate Transaction Rules. The Commission also does not find OPC’s argument persuasive that Empire should be required to apply its cost of short-term debt to 100 percent of its CWIP balances to determine the AFUDC rate to calculate additions to the rate base.

In this Report and Order, the Commission followed OPC’s recommendation to base Empire’s capital structure on LUCo’s capital structure, which the Commission finds is the appropriate way to address the impact of this affiliate transaction on the rate base. However, the Commission additionally finds that to the degree that any of the \$450,000 origination fee from Empire’s \$90 million promissory note was included in the AFUDC calculation; it should be removed from rate base.

Report and Order, p. 84.

8. Empire reads this provision to indicate that the only potential adjustment to rate base associated with the \$90 million note and its impact on AFUDC in terms of potential rate base adjustments, concerns the last sentence - “. . . the Commission additionally finds that to the degree that any of the \$450,000 origination fee from Empire’s \$90 million promissory note was included in the AFUDC calculation; it should be removed from rate base.”

9. Empire notes that the Report and Order further states both that:

- “The Commission also does not find OPC’s argument persuasive that Empire should be required to apply its cost of short-term debt to 100 percent of its CWIP balances to determine the AFUDC rate to calculate additions to the rate base”; and,
- “. . . the Commission followed OPC’s recommendation to base Empire’s capital structure on LUCo’s capital structure, which the Commission finds is the appropriate way to address the impact of this affiliate transaction on the rate base.”

10. Accordingly, in addition to using the ordered capital structure and debt cost for determining new rates, it is Empire’s intention to only take the action described above (i.e. to the degree that any of the \$450,000 origination fee from Empire’s \$90 million promissory note was included in the AFUDC calculation; remove it from rate base) in terms of a backward-looking adjustment. Empire seeks the Commission’s confirmation that its approach as outlined above is as intended by the Commission.

Issues Not in Dispute – Adoption of Settlement Terms

11. On April 15, 2020, certain parties filed a Global Stipulation and Agreement (“Settlement”) settling many of the issues in this case. The Office of the Public Counsel (“OPC”) objected to only certain portions of the Settlement.

12. On May 7, 2020, the Commission issued its *Order Directing the Parties to File a List of Issues No Longer in Dispute*, directing the parties to file a stipulation containing any issues no longer in dispute and the agreed upon solutions to those issues. The Commission explained that “undisputed issues are issues that are undisputed irrespective of Commission action on any other issues.”

13. On May 11, 2020, Empire, with the agreement of and on behalf of all parties, filed a Response to Commission Order that indicated as follows:

By agreement of the parties participating in this proceeding, the following issues contained within the filed joint list of issues are no longer disputed issues in this proceeding:

- Issue 2 (Rate Design, Other Tariff, and Data Issues), subparts f-q and s-y. Each of these sub-issues has been resolved pursuant to the terms of the Global Stipulation and Agreement executed by the Stipulation Signatories and filed on April 15, 2020 (the “Stipulation”). Although OPC objects to Stipulation provision five (“no changes to the customer charges in this proceeding”), OPC does not object to the residential customer charge remaining unchanged.
- Issue 5 (FAC), subparts b, second sentence of d-ii, d-iii, and e. Each of these sub-issues has been resolved pursuant to the terms of the Stipulation.
- Issue 15 (energy efficiency). OPC has withdrawn this issue. As between the Stipulation Signatories, this issue has been resolved pursuant to paragraph 20 of the Stipulation, to which OPC did not object.¹
- Issue 22b (reliable service). OPC has withdrawn this issue. As between the Stipulation Signatories, this issue has been resolved pursuant to paragraph 10 of the Stipulation, to which OPC did not object.
- Issue 23 (estimated bills). This issue has been resolved pursuant to paragraph 9 of the Stipulation, to which OPC did not object.
- Issue 45 (retirement). These issues have been resolved pursuant to paragraphs 27-29 of the Stipulation, to which OPC did not object.

¹ “The Office of the Public Counsel does not object to only the following terms of the *Global Stipulation and Agreement*: The changes to Empire’s FAC set out in subparagraphs c., d., f., and g. of paragraph 6; paragraph 7; paragraph 9 (including all of subparagraphs a. to k.); paragraphs 10 to 23; and paragraphs 27 to 29 . . .”

14. Through this Motion for Clarification, Empire requests that the Commission approve and authorize the resolutions contained in the *Global Stipulation and Agreement* that were not opposed by any party and were set forth in the Response to Commission Order.

WHEREFORE, Empire requests that the Commission grant the Company's Motion for Clarification for the reasons stated above and, thereafter, clarify as requested the issues identified herein. Empire requests a decision by July 22, 2020, as the requested decisions are a necessary part of the preparation of compliance tariffs.

Respectfully submitted,

/s/ Diana C. Carter

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed in EFIS on this 10th day of July, 2020, with notification of the same being sent to all counsel of record.

/s/ Diana C. Carter