Exhibit No.:
Issue(s): *Background of Stipulation; Asbury AAO*
Witness: *Mark L. Oligschlaeger*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Supplemental Testimony*
Case No.: *ER-2019-0374*
Date Testimony Prepared: *May 6, 2020*

MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL AND BUSINESS ANALYSIS DIVISION

SUPPLEMENTAL TESTIMONY

OF

MARK L. OLIGSCHLAEGER

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2019-0374

Jefferson City, Missouri
May 2020

TABLE OF CONTENTS OF

SUPPLEMENTAL TESTIMONY OF

MARK L. OLIGSCHLAEGER

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2019-0374

SUPPLEMENTAL TESTIMONY OF

MARK L. OLIGSCHLAEGER

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2019-0374

Q. Please state your name and business address.

A. Mark L. Oligschlaeger, Missouri Public Service Commission, P.O. Box 360, Suite 440, Jefferson City, MO 65102.

Q. Are you the same Mark L. Oligschlaeger who in this proceeding previously contributed to Staff's Cost of Service Report filed on January 15, 2020, submitted rebuttal testimony on March 3, 2020, submitted surrebuttal testimony on March 27, 2020, and submitted supplemental surrebuttal testimony on April 17, 2020?

A. Yes, I am.

Q. What is the purpose of this supplemental testimony?

A. The purpose of this testimony is to present evidence to the Commission in support of certain aspects of the Global Stipulation and Agreement ("Stipulation") filed by the signatory parties on April 15, 2020. I will provide comments explaining the general background behind the Stipulation, and also support the provisions "freezing" certain Tax Cuts and Jobs Act ("TCJA") amortization balances and establishing an accounting authority order ("AAO") for the Asbury generating station ("Asbury") retirement. Finally, I will sponsor several of the Staff responses to the Commission Questions submitted on April 28, 2020.

BACKGROUND OF STIPULATION

Q. Please comment on the general environment under which this Stipulation was agreed to.

A. As the Commission knows, in mid-March 2020 measures were taken by state and local governments in Missouri, as well as by the federal government, to stem the ongoing Covid-19 pandemic. These measures have had and will likely continue to have serious dampening effects on the economy, and consequently potential negative impacts on both utilities and utility customers.

Q. What impact did the Covid-19 pandemic have on the terms of the Stipulation?

A. Negotiations concerning possible settlement of this rate case proceeding began in late March 2020, at a time when the potential economic impact of the Covid-19 measures were quite evident to the parties. Due to Covid-19, Empire expressed a willingness to accept an outcome of no change in base customer rates resulting from this proceeding if other conditions were met. Most other parties agreed that no change in rates would be a favorable or acceptable outcome for the case, and commenced to discuss the specific terms and conditions for an agreement that would feature this result.

Q. What provisions of the Stipulation are specifically tied to the current Covid-19/economic environment, in your view?

A. The provisions in the Stipulation that most clearly are a product of the unique Covid-19 situation are: a) the agreement for no change in customer rates; b) an agreement for a "phase-in" in rates of the revenue requirement associated with Empire's recent growth in rate base; and c) the agreement to effectively "freeze" the amortization balances for two impacts of the 2017 TCJA.

Q. All of the provisions you listed in the answer above may be thought of as unusual or abnormal features for rate case settlements. Please explain why Staff was willing to agree to these proposals for Case No. ER-2019-0374.

A. As preliminary background, it should be noted that parties commonly enter into settlement negotiations with some idea of what the results of the case might be if all major issues were litigated and ultimately decided by the Commission. Those perceptions, of course, will heavily influence whether, and on what terms, parties may be willing to enter into partial or global settlements. In many cases, the perception by a party of how a case may be decided by the Commission may be substantially different from its filed positions.

Staff's true-up accounting schedules filing on March 27, 2020 showed an overall revenue requirement recommendation of a rate reduction for Empire of approximately $6.1 million. However, Staff's expectations were that the most likely result of the major issues in this case going to hearing would be a rate increase for Empire, not a decrease. For that reason, and in conjunction with the reality of the Covid-19 economic impact on Empire and its customers, Staff's view was that no change in base rates was a favorable and appropriate outcome for this case. That position in turn led to its decisions to support the provisions in the Stipulation regarding the rate base phase-in and the TCJA impacts. I will now discuss each of those provisions in more detail.

Q. What is a rate "phase-in?"

A. A phase-in is a mechanism to defer all or a portion of a rate increase that under normal circumstance would be ordered by the Commission to take effect immediately. Phase-ins may be ordered to mitigate "rate shock" to customers due to large rate increases, or for other reasons. The Commission has implemented phased-in rate increases several times in the past.

Q. Please explain the provisions in the Stipulation concerning the rate "phase-in."

A. Paragraph 4 of the Stipulation asks the Commission to authorize Empire to defer to a regulatory asset an amount equal to the growth in its rate base from April 1, 2019 through January 31, 2020, and to recover the revenue requirement associated with this growth in Empire's next rate case. Under more normal circumstances, Empire would be allowed immediate recovery in this rate case of these rate base amounts (absent questions of prudence). However, due to the signatories desire to hold Empire's base rates constant at this time, approval of this phase-in mechanism in lieu of an immediate rate increase was deemed by the signatories to be reasonable and in the overall interest of Empire's customers.

Q. Please explain the provisions in the Stipulation concerning TCJA impacts.

A. The primary impact of the TCJA was to lower corporate income taxes on an ongoing basis starting January 1, 2018. Empire's electric rates were adjusted downward in August 2018 to take into account the lower effective tax rate applicable to it. However, two other impacts of the TCJA have yet to be reflected in Empire customers' rates: 1) the pass back to customers of excess accumulated deferred income taxes ("EADIT") previously collected from customers based upon the former corporate tax rate; and 2) the pass back to customers of the financial benefit to Empire of collecting approximately eight months of revenue in rates (January – August 2018) calculated assuming the former higher corporate tax rate while a new and lower rate was in effect. The excess of the amount of income tax recovered in rates compared to Empire's actual tax liability reflecting the new lower tax rate for the eight months is commonly referred to as "stub period revenues." The impact of including amortizations of both balances in current rates would be to lower customer rates, all other things being equal.

Paragraph 3a of the Stipulation calls for the balance of EADIT to be "frozen" until Empire's next general rate case, at which point reflection of amortization of this amount in customer rates is required. Paragraph 3b of the Stipulation calls for a *de minimus* amortization of the stub period deferral in this case, with the remainder to be amortized (presumably over a much shorter period) in the next general rate case.

Q. Given that faster reflection of the TCJA amortization in cost of service would lower customer rates (all other things being equal), why is it appropriate to "freeze" the amortizations at this time and wait to flow these amounts to customers until Empire's next rate case?

A. These provisions are appropriate in that they allow for customer rates not to be increased as a result of this case. Staff's perception that a rate increase was the most likely result of this filing took into account the TCJA tax benefits; i.e., even if the EADIT and stub period deferrals were immediately amortized and included in rates, it was likely that Empire would still receive an overall rate increase. Under the particular circumstances of this proceeding, foregoing immediate flow-back to customers of the TCJA EADIT and stub period benefits in return for an agreement to hold base customer rates constant appears to be reasonable and in the overall interest of Empire's customers.

Q. Will approval of the Stipulation reduce overall customer benefits from the TCJA?

A. No, except for a modest delay in customer receipt of those benefits. The full amount of the EADIT and stub period balances will be flowed to customers over a reasonable period of time in Empire's next rate case, under the provisions of the Stipulation.

ASBURY AAO

Q. Please explain the provisions in the Stipulation concerning the retirement of Asbury.

A. As of the date of the Stipulation filing, Asbury has been retired by Empire and is no longer generating power. With its provisions calling for no change in base rates, the Stipulation effectively assumes that none of the financial impact of the retirement will be reflected in base rates resulting from this case, and that all of the financial impacts of the Asbury retirement will be captured going forward through deferral accounting treatment via an AAO for rate inclusion in Empire's next rate case.

Q. What is an AAO?

A. An accounting authority order is an authorization from the Commission that a utility will account for a particular financial item (revenues, expenses or rate base) in a different manner than normally required under the applicable Uniform System of Accounts. The Commission has held in many prior cases that the standard to be applied to consideration of AAO requests is: a) whether the underlying event giving rise to the cost in question was "extraordinary" in nature; and b) whether the costs associated with the event were material.

Q. How has the Commission defined an "extraordinary event" in the past?

A. The Commission has consistently defined an extraordinary event as one that is unusual, unique and non-recurring.

Q. How has the Commission defined "material" in the context of AAO requests?

A. While making clear that it is not intended as an inflexible standard, the Commission has consistently defined material in this context as meaning the extraordinary event should have a financial impact at least equal to 5% of the utility's annual net income.

Q. Does Staff consider the financial impact of the Asbury retirement to be material?

A. Yes.

Q. Does the Staff consider the Asbury retirement to be an extraordinary event as defined in the past by the Commission, and thus eligible for AAO treatment?

A. Yes. As part of its direct filing, Staff recommended that certain financial aspects of the Asbury retirement be deferred for consideration in Empire's next rate case. Since that filing, due in part to the Commission's procedural orders in this case, Staff has broadened its position to recommend deferral treatment of all Asbury financial impacts, and support the provisions to that effect in the Stipulation.

Q. Why does Staff consider the retirement of Asbury to be an extraordinary event?

A. Although utility retirements of plant assets in general are common and cannot be considered to be inherently extraordinary, retirements of specific plant assets under limited circumstances may be considered as such. Retirement of generating stations can be one such instance, due to the high dollar value of the plant assets and the rarity of the retirement of units of that nature. Asbury was the primary baseload generating unit owned by Empire for many years, and retirement of a unit of this size is unprecedented for Empire. For that reason, the retirement of Asbury can be reasonably considered to be extraordinary in nature.

In addition, the timing of Asbury's retirement is also a consideration of whether it should be considered to be extraordinary. The retirement occurred very late in this particular rate case proceeding, thus significantly limiting the time for the parties and the Commission to consider the ramifications of the retirement on the rates set in this case. For that reason as well, the Asbury retirement can be considered to be extraordinary.

Finally, the retirement of Asbury has occurred well before the end of its estimated depreciable life and, no matter what exact retirement date for Asbury may be ultimately be determined by the Commission, Staff understands that there is a significant amount of unrecovered investment at Asbury by Empire at the time of its retirement. This, too, makes the Asbury retirement extraordinary.

Q. Has the Commission recently found the retirement of a generating station by another Missouri investor-owned utility to be extraordinary in nature?

A. Yes. In Case No. EC-2019-0200, the Commission found Evergy West's retirement of the Sibley generating units in 2018 to be extraordinary in nature. While there are some differences between the circumstances of the two retirements, Staff's view is that the two events are similar enough in nature that affording consistent accounting and ratemaking treatment for both is appropriate. In particular, Staff notes that the Commission's Order in Case No. EC-2019-0200 found that the amount of unrecovered investment at Sibley at the point of its retirement to be a factor in its determination that the event was extraordinary.

Q. Please describe generally how the Asbury deferral will be quantified if the Global Stipulation is approved by the Commission.

A. Appendix D to the Stipulation contains the amounts agreed upon by the signatories as to the Asbury "baseline;" i.e., the amount of Asbury related investment and expenses assumed to be currently reflected in Empire's rates. The deferral will capture any difference between the level of investment and expenses incurred by the Company after the retirement of Asbury with the baseline amounts in Appendix D, as long as the difference is reasonably attributable to the Asbury retirement. While some elements of Empire's cost of service may increase due to the plant retirement, it is expected that the deferral will reflect an overall net savings to Empire due to its decision to retire Asbury.

The following items will be reflected in the deferral:

a) The change in rate base due to the Asbury retirement, multiplied by a rate of return value factored up for income taxes;
b) The reduction in depreciation expense due to the retirement;
c) The reduction in labor related expenses at Asbury due to the retirement;
d) The reduction in non-labor operations and maintenance expense associated with Asbury due to the retirement;
e) Any reduction in property tax expense due to the retirement; and
f) Amounts incurred by Empire associated with cost of removal/salvage activities at Asbury following its retirement.

Q. When does the Stipulation require that Empire's deferral of the Asbury retirement impacts begin?

A. The Stipulation calls for the deferral to begin on January 1, 2020 and extend into Empire's next general rate case. As discussed in the supplemental testimony of Staff witness Charles T. Poston, PE, there is some doubt as to the appropriate date for which to consider the Asbury unit to have been effectively retired. Beginning the deferral on January 1, 2020 allows parties to argue different positions in Empire's next rate case as to when the retirement actually occurred, preserves accounting of the amounts for consideration regardless of the retirement date ultimately ordered by the Commission in a future case, and permits parties to recommend an amount of the deferral be recovered based upon that determination.

Q. Will Empire customers be disadvantaged by the stipulated deferral of the impacts of the Asbury retirement, compared to the option of reflecting the net savings from the retirement in rates set in this case?

A. In Staff's judgment, not materially. The difference between the deferral and immediate rate recognition scenarios is primarily one of timing. While customers will have to wait a modest period of time to receive the direct benefits of the Asbury retirement in rates if the impacts are deferred, the full amount of those net savings will still be captured and available to flow to customers in the next rate case.

In fact, in one real sense customers may fare better under the deferral approach. If rates are set in this case to reflect Asbury retirement savings as advocated by The Office of the Public Counsel, then customers will only begin to receive the benefit of the actual savings on the effective date of new rates (i.e., as late as June 2020), and then only on an ongoing basis. Under the deferral approach, savings from the Asbury retirement from as early as January 2020 will be deferred and available to pass on to customers in the next rate case, thus increasing the total amount of Asbury savings that can ultimately benefit customers.

Q. What responses to Commission Questions regarding the Stipulation are you sponsoring?

A. I am sponsoring the responses to the following Commission Questions to Staff:

1) Asbury, No. 3
2) Affiliated Transactions, Nos. 10, 12 and 13
3) Tax Cuts and Job Act Revenues, No. 3
4) Global Stipulation and Agreement, Nos. 3, 4, 6 and 7

All Staff responses to Commission questions will be filed simultaneously as a separate document from Staff's initial brief in this proceeding.

Q. Does this conclude your supplemental testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	Case No. ER-2019-0374

AFFIDAVIT OF MARK L. OLIGSCHLAEGER

STATE OF MISSOURI	)	
	)	ss.
COUNTY OF COLE	)	

COMES NOW MARK L. OLIGSCHLAEGER and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Supplemental Testimony*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.

/s/ __*Mark L. Oligschlaeger*____________
MARK L. OLIGSCHLAEGER