



on August 31 continued to bear an issue date of August 17, 2020, and an effective date of September 16, 2020.

4. On September 1, 2020, the Staff of the Commission filed a recommendation stating as follows:

Staff reviewed the compliance tariff book, as substituted on August 28. Staff recommends that the Commission approve the compliance tariff book, as substituted in compliance with its *Amended Report and Order*, and which incorporates a fictitious name change along with the AMI tariff changes as approved in Case No AO-2020-0237.

5. On September 1, the Office of the Public Counsel (“OPC”) filed a response to Empire’s compliance tariffs alleging several deficiencies with Empire’s proposed fuel adjustment clause (“FAC”) tariff sheets. Three of the four alleged deficiencies raise new issues and do not relate to whether the tariff sheets submitted by Empire are in compliance with the Commission’s orders in this matter. The other alleged deficiency is actually a request from OPC for the Commission to compel Empire to include language in its compliance tariff sheets that is inconsistent with the Commission’s orders in this case. OPC summarizes the alleged deficiencies as follows:

The issues identified include the material issue that the definition of PP = purchased power costs includes language for other FAC terms. See Sheet 171, subpart 4. They also include the material issue of the lack of identification of the FERC subaccounts that are included and excluded from the operation of Empire’s FAC. The meaning of VAF should be included in Empire’s FAC tariff sheets—“voltage adjustment factors.” References to the Neosho Ridge, North Fork Ridge, and Kings Point wind projects should be factually accurate.

**OPC’s Alleged Deficiency No. 1**

6. OPC asserts that certain language should be moved from one tariff sheet to another, stating as follows: “Since this language is not specific to purchased power (PP) but

applies to fuel costs (FC), PP, Emissions costs (E) and off-system sales revenue (OSSR) it should be moved out of the definition of PP.”

7. This is a new recommendation from OPC, and the suggested language change was not addressed in any issue put before the Commission as needing resolution. As such, OPC’s alleged deficiency does not relate to whether the tariff sheets submitted by Empire are in compliance with the Commission’s orders in this case. Nonetheless, the Company is not opposed to moving the language as is now being suggested by OPC.

### **OPC’s Alleged Deficiency No. 2**

8. Next, OPC asserts that a new tariff sheet is needed to list all FAC subaccounts and that certain language should be changed to “allow management the discretion to change sub accounts.” Again, these are new recommendations from OPC, and the suggested changes have not previously been addressed by the Commission in this proceeding. Further, there is no statute or regulation which requires the listing of subaccounts in a utility’s FAC tariff sheets.

9. Empire objects to OPC’s suggestion that a new tariff sheet be added at this time to list subaccounts, as it would be inappropriate to require a tariff change every time a subaccount is added, changed, or deleted. Empire also objects to OPC’s suggested language change, as Company management already has discretion to change subaccounts. The total impact of OPC’s suggested changes would be to hamstring Company management and require a tariff amendment for any change to subaccounts.

10. To address OPC’s concerns on this point, the compliance tariff sheets filed by Empire contain the requirement that the list of subaccounts be included in the FAC monthly reports that are provided to Staff and OPC. The additional changes proposed by OPC are neither necessary nor appropriate.

### **OPC's Alleged Deficiency No. 3**

11. OPC states, “(r)eferences to the Neosho Ridge, North Fork Ridge, and Kings Point wind projects should be factually accurate,” “(t)hese are not ‘company’ wind projects yet,” and “(n)o costs or revenues should be included in the FAC until the Commission says so.”

12. On this issue, the Commission noted in the *Amended Report and Order* that the parties had resolved the issue of “(s)hould any wind project costs or revenues flow through the FAC before the wind projects revenue requirements are included in base rates” through a provision of the Global Stipulation and Agreement to which OPC did not object, and the Commission specifically found that “the undisputed issues should be resolved consistent with the terms of the Agreement unless otherwise specified in this order.” *Amended Report and Order*, pp. 19-25.

13. The provision of the Global Stipulation and Agreement to which OPC did not object, and the Commission approved, reads as follows: “With respect to Empire’s North Fork Ridge, Neosho Ridge, and Kings Point wind projects, the FAC tariff language shall be revised and clarified to explicitly prohibit costs associated with the wind projects and revenue generated from the wind energy sold to the Southwest Power Pool (“SPP”) from being passed through to customers via the Fuel Adjustment Clause before the wind projects’ revenue requirements are included in rates.”

14. Empire’s compliance tariff sheet contains the following: “With respect to the Company’s North Fork Ridge, Neosho Ridge, and Kings Point wind projects, costs associated with the wind projects and revenue generated from the wind projects shall not be passed through to customers via the Fuel Adjustment Clause before the wind projects’ revenue requirements are

included in rates.” This is exactly in conformity with the Commission’s orders in this case, and the changes OPC is suggesting at this time must be rejected.

**OPC’s Alleged Deficiency No. 4**

15. Lastly, OPC asserts that Empire failed to define “VAF” in its compliance tariff sheets. Empire agrees that “VAF” is not defined in its compliance tariff sheets, as, previously, no party had requested that this definition to be added, and the Commission did not direct or authorize Empire to revise its FAC tariff sheets to include this definition. As such, Empire’s compliance tariff sheets on file with the Commission are not deficient in this regard. In any event, Empire has no objection to adding “voltage adjustment factors” prior to use of the acronym “VAF,” as is now being requested by OPC.

**WHEREFORE**, Empire submits its Response to Commission Order and requests such relief as is just and proper under the circumstances.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the above document was filed in EFIS on this 4<sup>th</sup> day of September, 2020, with notification of the same being sent to all counsel of record.

/s/ Diana C. Carter