

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

In the Matter of the Propriety of the)
Rate Schedules for Electric Service of) **File No. ER-2018-0226**
Union Electric Company, Doing Business)
as Ameren Missouri)

In the Matter of the Propriety of the)
Rate Schedules for Natural Gas Service of) **File No. GR-2018-0227**
Union Electric Company, Doing Business as)
Ameren Missouri)

In the Matter of the Propriety of the)
Rate Schedules for Electric Service of) **File No. ER-2018-0228**
The Empire District Electric Company)

In the Matter of the Propriety of the)
Rate Schedules for Gas Service of) **File No. GR-2018-0229**
Empire District Gas Company)

In the Matter of the Propriety of the)
Rate Schedules for Natural Gas Service of) **File No. GR-2018-0230**
Summit Natural Gas of Missouri, Inc.)

In the Matter of the Propriety of the)
Rate Schedules for Steam Service of) **File No. HR-2018-0231**
KCP&L Greater Missouri Operations Company)

In the Matter of the Propriety of the)
Rate Schedules for Steam Service of) **File No. HR-2018-0232**
Veolia Energy Kansas City, Inc.)

**PUBLIC COUNSEL’S ARGUMENT IN
SUPPORT OF COMMISSION’S AUTHORITY**

In response to the Commission’s solicitation for argument over the use of an Accounting Authority Order to account for the collection of revenues in excess of a company’s corporate tax rate obligation, the Office of the Public Counsel submits the following:

1. The Commission May Issue Accounting Authority Orders

The Commission can "prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations, electrical corporations, water corporations[.]" Section 393.140(4) RSMo. The Commission can also create deferral accounts "after hearing ... prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited." Section 393.140(8) RSMo. The Commission has promulgated rules for electric,¹ natural gas,² steam,³ sewer and water⁴ utilities incorporating accounting authorities that permit the use of such accounts for circumstances of unusual or infrequent occurrences.

The Uniform System of Accounts, in its General Instruction No. 7, specifically states:

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. 18 CFR PART 101.

a. Federal Corporate Income Tax Rate Reduction is an Extraordinary Event

In both the amount of the tax rate reduction and the rarity of the event qualify meets the threshold of an unusual or infrequent occurrence. The Tax Cuts and Jobs Act of 2017 reduced the corporate tax rate by approximately 40%. While only death may be more certain than taxes, the extraordinary event is not the payment of income taxes, but the once in a generation

¹ Electric corporations must use the Uniform System of Accounts as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR Part 101 (1992)[.] 4 CSR 240-80.020.

² Gas corporations must use the Uniform System of Accounts (USoA) issued by the National Association of Regulatory Utility Commissioners (NARUC) in 1973 and revised in July 1976. 4 CSR 240-61.020(1).

³ 4 CSR 240-80.020.

⁴ Water corporations must use the Uniform System of Accounts (USoA) issued by the National Association of Regulatory Utility Commissioners (NARUC) in 1973 and revised in July 1976. Commission Rule 4 CSR 240-50.030(1).

reduction to the tax rate.⁵ Unlike other circumstances where utilities have sought to cast ordinary operational costs as extraordinary events for the purposes of establishing AAOs or trackers⁶, the revenues in excess of the utility's tax obligation in question are 1) currently being collected in rates and 2) the rates are no longer representative of utilities' tax obligations, and without action, the collection of revenues for taxes in excess of utilities' obligations unduly benefits shareholders.

The most recent federal corporate tax rate reduction was the Tax Reform Act of 1986, occurring 31 years ago and reducing the corporate tax rate from 48% to 34%.⁷ In response to that tax cut, this Commission approved a variety of means, such as by voluntary agreement,⁸ to expedite the benefits to ratepayers. In *Southwestern Bell Telephone*, the Commission adopted a stipulation for the return of tax benefits which a telephone utility received because of the Tax Reform Act of 1986 even though the agreement did not refund all of the benefits.⁹ 29 Mo. P.S.C. (N.S.) 194. As identified in Attachment A, 14 proceedings were concluded through agreement that addressed that tax rate reduction. There appears to be a reluctance among this generation's utilities to embrace the civic-minded attitude of their predecessors in achieving such reductions via agreement. Perhaps the scheduled oral argument on the matter will provide an opportunity for explanation.

⁵ As the Public Counsel was born in 1987, this statement is not meant to be hyperbole.

⁶ See *Report and Order*, Re Kansas City Power & Light Company, Case No. ER-2014-0370, pp. 50-59 (Sept. 2, 2015); *Report and Order*, Re: Kansas City Power & Light Co./KCP&L Greater Missouri Operations Company, Case Nos. ER-2012-174/ER-2012-0175, pp. 28-32 (January 9, 2013).

⁷ The federal corporate tax rate was raised to 35% in 1993.

⁸ *In the matter of Staff Review of St. Joseph Light & Power Company*, Report and Order, EO-87-87 (Feb. 11, 1987).

⁹ In the 1987 proceeding, the Commission found that it "does not have the authority to order a rate reduction based upon an examination of one factor such as tax savings to the exclusion of all others. State ex rel. UCCM v. Public Service Commission, 585 S.W.2d, 41 (Mo. banc 1979). Thus, absent a voluntary reduction by the utility company, a full blown rate case is required to bring about a rate reduction as a result of the tax savings." 29 Mo. P.S.C. (N.S.) 194.

In setting rates in a general rate proceeding subsequent to a the effective date of a tax rate reduction, and in consideration of all relevant factors to develop such rates, the Commission could consider a utility's commitment to its customers through a voluntarily reduction of rates by agreement outside of a general rate proceeding. Conversely, the Commission could consider a utility's failure to expediently pass tax rate savings through to its customers in considering all relevant factors.

b. Accounting Authority Orders Are Not Ratemaking

In considering the question as to whether the Commission's creation of an AAO constitutes ratemaking, the Courts have determined a deferral mechanism only represents "the past costs are being considered to set rates to be charged in the future." State ex rel. Mo. Gas Energy v. Pub. Service Comm'n, 210 S.W.3d 330, 335 (Mo. App. W.D. 2006). "AAOs are not the same as ratemaking, and create no expectation of recovery." *Id.* at 336. "Although recovery under the AAO is condition on filing a subsequent rate case, this is not a case of retroactive ratemaking." State ex rel. Mo. Gas Energy v. Pub. Service Comm'n, 210 S.W.3d 330, 335 (Mo. App. W.D. 2006). The Commission has the authority to establish accounts authority orders outside of general rate proceedings.

2. The AAO Should Be Ordered to Apply from January 1, 2018

In the event that the Commission authorizes AAOs to preserve the revenues for taxes in excess of utilities' obligations in contemplation of the ratepayers' interest, the Commission should set the date as of the effective date of the implementation of the Tax Cuts and Jobs Act of 2017. This recommendation is consistent with past Commission practice, where AAOs account for costs incurred *prior* to the authorization of the AAO. This circumstance warrants similar treatment.

a. Empire District Electric Company AAO – Joplin Tornado

In EU-2011-0387, the Commission approved a Stipulation and Agreement to authorize the Empire District Electric Company to book costs associated with rebuilding in the aftermath of the May 2011 tornado.¹⁰ The Commission order was issued in November of the same year; permitting the Company to reach back nearly seven months to defer costs associated with that event. Similarly, the Commission knows that the effective date of the tax rate is January 1, 2018, and revenues for taxes collected in excess of utilities’ obligations began on that date. Any deferral account should begin on the date the extraordinary event occurs.

b. SB 564 Permits Deferral From January 1, 2018

In regard to ER-2018-0226 and ER-2018-0228, both cases dealing with electric utilities, recent legislation awaiting gubernatorial approval authorizes the Commission with express authority to adjust rates to reflect the reduction in the federal tax rate. In addition, the legislation provides the following:

18 The commission shall also require electrical corporations to
19 which this section applies, as provided for under subsection 1 of this
20 section, to defer to a regulatory asset the financial impact of such
21 federal act on the electrical corporation for the period of January 1,
22 2018, through the date the electrical corporation's rates are adjusted on
23 a one-time basis as provided for in the immediately preceding
24 sentence. The amounts deferred under this subsection shall be
25 included in the revenue requirement used to set the electrical
26 corporation's rates in its subsequent general rate proceeding through
27 an amortization over a period determined by the commission.

To be clear, Public Counsel’s position is that the Commission already has general authority to authorize deferral accounts absent the statutory language. The statutory language,

¹⁰ *In the Matter of Empire District Electric Company*, Report and Order, EU-2011-0387 (Dec. 7, 2011). In the Company’s application, it expressly sought “the Commission issue an Accounting Authority Order authorizing Empire to account for and record on its books as a regulatory asset in the incremental May 22, 2011 tornado and severe weather related expenses and the lost fixed cost components of its rates[.]”

once signed, would grant the Commission additional authority to effectuate the rate decrease, as well as defining the treatment of surplus tax collections since the implementation of the tax cut as of January 1, 2018.

ER-2018-0226 and ER-2018-0228 should not be dismissed until Governor Eric Greitens signs the legislation.

Wherefore, the Public Counsel submits this argument for the information of the Commission and requests that the Commission proceed with all expediency to secure the benefit of the reduction in the federal corporate tax rate for ratepayers.

Respectfully submitted,

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I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 17th day of May, 2018.

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