

**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

**PUBLIC COUNSEL’S MOTION FOR THE COMMISSION TO RECONSIDER ITS
ORDER DENYING PUBLIC COUNSEL’S MOTION TO MODIFY TEST YEAR**

COMES NOW the Office of Public Counsel (“Public Counsel”) and, for its motion for the Commission to reconsider its order denying Public Counsel’s motion to modify the trued-up, updated test year the Commission ordered for this case, states:

1. On January 28, 2020, effective that same day, the Commission denied Public Counsel’s December 9, 2019, motion to modify the test year in this case so that Empire’s revenue requirement the Commission uses for setting Empire’s electric rates in this case based on that test year would include all of the material impacts of Liberty-Empire retiring its Asbury energy center.

2. When setting new general rates, which are prospective, the Commission is required to consider “all relevant factors,”¹ and when doing so it relies on historical information²—in this case a test year, updated and trued-up. The Commission explained in the *Report and Order* that it issued on April 29, 2015, in a recent Ameren Missouri general electric rate case, Case No. ER-2014-0258, “Rate making is designed to be forward looking. ***The goal is to choose a representative test year to estimate what costs will be when rates are in effect***, not to make adjustments for past earning levels.”³ (Emphasis added). In the *Report and Order* it issued on

¹ § 393.270(4), RSMo., *State ex rel. Missouri Water Co. v. Public Service Com.*, 308 S.W.2d 704 718-19 (Mo. banc 1957), ; *State ex rel. Utility Consumers Council, Inc. v. Public Service Com.*, 585 S.W.2d 41, 49 (Mo. banc 1979).

² See *Kan. City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757, 767 (Mo. App. 2016).

³ 25 MoPSC3d 70, 100-101.

September 2, 2015, in a Kansas City Power & Light Company’s general electric rate case, Case No. ER-2014-0370, the Commission explained:

The Commission also established the true-up period to . . . to reflect any significant and material impacts on KCPL’s revenue requirement. The use of a true-up audit and hearing in ratemaking is a compromise between the use of a historical test year and the use of a projected or future test year. It involves adjustment of the historical test year figures for known and measurable subsequent or future changes. However, the true-up is generally limited to only those accounts necessarily affected by some significant known and measurable change, such as a new labor contract, a new tax rate, or the completion of a new capital asset. The true-up is a device employed to reduce regulatory lag, which is “the lapse of time between a change in revenue requirement and the reflection of that change in rates.”⁴ (Footnotes in original omitted).

3. As Public Counsel stated in its reply to Liberty-Empire’s response to Public Counsel’s motion to modify the test year, Empire’s following statement in its December 19, 2019, response, “More specifically, Liberty-Empire will retire the plant on March 1, 2020,” the retirement of Asbury is both known and measurable. The anticipated effective date of new rates in this case is July 11, 2020. December 19, 2019, precedes July 11, 2020, by 205 days; March 1, 2020, by 132 days, and March 31, 2020, by 102 days.

4. On January 15, 2020, Commission Staff filed its *Cost of Service* Report. The following is from pages 106-107 of that report:

Staff recommends that isolated adjustments to certain rate base related financial impacts of the retirement of the Asbury plant be included in this case. The amount of these adjustments will be known and measurable at the time of the Asbury retirement, well before the operation-of-law date in this proceeding. Accordingly, Staff intends to adjust plant-in-service and the accumulated depreciation reserve to reflect the retirement of the Asbury plant. Staff also intends to remove Asbury depreciation expense from this case. In addition, Staff will also remove any fuel inventory associated with Asbury from rate base. These adjustment amounts will be quantified and supported in Staff’s surrebuttal/true-up testimony filing scheduled for March 27, 2019.

⁴ 25 MoPSC3d 368, 375.

5. Based on Liberty-Empire's responses to data requests, the operations and maintenance expense Liberty-Empire is incurring for Asbury is about ** **, which would dollar-for-dollar impact Liberty-Empire's revenue requirement; therefore, for that reason alone Liberty-Empire's retirement of Asbury is significant and material. However, retiring Asbury also impacts Liberty-Empire's fuel and fuel-related costs—it will no longer be burning coal at Asbury, and Public Counsel, among other issues, is taking issue with Liberty-Empire continuing to recover through rates its \$124 million of capital investments made in 2015 (estimated to be about \$6 million of revenue requirement impact) or return on its other capital investments in Asbury (estimated to be about \$0.5 million of revenue requirement impact).

6. To set new rates based on the assumption that Empire's 200 MW Asbury coal generating plant is still operating, while knowing that Asbury is retired before the Commission sets those rates, and when the significant and material impacts of that retirement on Liberty-Empire's revenue requirement can be quantified, violates the fundamental goal of ratemaking—to set rates that gives Liberty-Empire a reasonable opportunity to recover through its rates its future costs, and a reasonable return on its investment used to serve its customers, nothing less, nothing more.

WHEREFORE, because for the Commission to fail to consider the impacts on Liberty-Empire's revenue requirement of Liberty-Empire's retirement of its Asbury generating plant over four months before the anticipated effective date of new rates in this case violates the fundamental goal of ratemaking—to set rates that give Liberty-Empire a reasonable opportunity to recover through its rates its future costs, and a reasonable return on its investment used to serve its customers, Public Counsel moves the Commission to reconsider its order denying Public Counsel's motion to modify the ordered test year to include isolated adjustments related to the

retirement of Asbury, as well as updates to September 30, 2019, and true-up through January 31, 2020, or, alternatively, to modify the procedural schedule to extend the true-up date 29 days from January 31, 2020, to March 1, 2020, concomitantly extend the true-up cutoff 34 days from March 13, 2020, to April 16, 2020, add a true-up hearing on or about Tuesday, April 28, 2020, if needed, and extend the discovery cutoff date for true-up information from the currently ordered discovery cutoff date of April 9, 2020, to Monday, April 27, 2020.

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

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 30th day of January 2020.

/s/ Nathan Williams