

Exhibit No.:

*Issue(s): Rate Case Expense Sharing
Mechanism, Amortization
of PeopleSoft Intangible
Asset, Demand Side
Management Cost
Recovery, Amortization,
Ongoing Amortization
Tracker*

Witness: Nathan Bailey, CPA

Sponsoring Party: MoPSC Staff

*Type of Exhibit: Surrebuttal / True-Up Direct
Testimony*

Case No.: ER-2024-0261

Date Testimony Prepared: September 17, 2025

MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL & BUSINESS ANALYSIS DIVISION

AUDITING DEPARTMENT

SURREBUTTAL / TRUE-UP DIRECT TESTIMONY

OF

NATHAN BAILEY, CPA

**THE EMPIRE DISTRICT ELECTRIC COMPANY,
d/b/a Liberty**

CASE NO. ER-2024-0261

*Jefferson City, Missouri
September 2025*

1 **SURREBUTTAL / TRUE-UP DIRECT TESTIMONY**

2 **OF**

3 **NATHAN BAILEY, CPA**
4 **THE EMPIRE DISTRICT ELECTRIC COMPANY,**
5 **d/b/a Liberty**

6 **CASE NO. ER-2024-0261**

7 Q. Please state your name and business address.

8 A. Nathan Bailey, Fletcher Daniels Office Building, 615 East 13th Street,
9 Room 201 Kansas City, Missouri 64106.

10 Q. By whom are you employed and in what capacity?

11 A. I am a Senior Utility Regulatory Auditor employed by the Staff (“Staff”)
12 of the Missouri Public Service Commission (“Commission”).

13 Q. Are you the same Nathan Bailey that provided direct testimony in this matter,
14 filed July 2, 2025?

15 A. Yes.

16 Q. What is the purpose of your surrebuttal / true-up direct testimony?

17 A. To respond to Empire District Electric Company d/b/a Liberty’s (“Empire”)
18 witness Charlotte Emery’s rebuttal testimony regarding the rate case expense sharing
19 mechanism. Additionally, Staff updated appropriate balances for expenses and rate base
20 balances for the following: PeopleSoft amortization, Iatan and Plum Point, Demand Side
21 Management amortization (“DSM”) and Staff proposed regulatory tracking mechanism,
22 (“Tracker”).

RATE CASE EXPENSE SHARING

Q. What is rate case expense sharing?

A. Rate case expense sharing is the allocation, or sharing, of discretionary rate case expense between the beneficiaries of a rate case: ratepayers and Empire's investors. Generally, utility management controls rate case expense including the hiring of attorneys, consultants, and outside services in addition to internal personnel.

Q. What is Empire's opposition to the rate case expense sharing mechanism?

A. On page 42 of her rebuttal testimony in this case, witness Charlotte Emery disputes the rate case sharing mechanism and asserts that, at least in the present case, external consultant expenses should be reimbursed at 100% of prudently incurred costs.

Q. Would excluding the cost of consultants be consistent with the intent of rate case expense sharing?

A. No. Including 100% of outside consultants in the rate case expense charged to ratepayers ignores that the costs were incurred for the benefit of Empire's shareholders. It is more appropriate to recognize cost-causation principles and divide the cost of 3rd party consultants between ratepayers and shareholders.

Q. Why is it appropriate to recognize some portion of rate case expense as a shareholder benefit?

A. Rate case expense sharing is appropriate because:

1) Rate case expense sharing creates an incentive and eliminates a disincentive on the utility's part to keep rate case expenses to reasonable levels;

2) Both ratepayers and shareholders benefit from the rate case process.

The ratepayer is receiving the opportunity to be provided safe and adequate

1 service at a just and reasonable rate and the shareholder is receiving an
2 opportunity to receive an adequate return on investment;

3 3) It is fair and equitable to expect shareholders to carry a reasonable portion of the
4 rate case burden; and

5 4) There is a high probability that some recommendations advocated by utilities
6 through the rate case process will ultimately be found by the Commission to not
7 be in the public interest.

8 Q. What portion of this expense does Staff recommend be included in
9 cost of service?

10 A. Staff recommends allocating Empire's incremental discretionary rate case
11 expense to both ratepayers and shareholders using a 50/50 split of these costs.

12 Q. Has the Commission approved rate case expense sharing in other cases?

13 A. Yes. Staff's recommendation is consistent with the Commission's recommended
14 50/50 split used in other cases¹ and most recently in Empire's 2019 rate case.²
15 Additionally, The Missouri Supreme Court, in 2021, upheld the Commission's use of the 50/50
16 sharing mechanism in Commission Case No. GR-2017-0215, a Spire Missouri rate case.³

¹ *Report and Order*, Case Nos. GR-2017-0215, page 55 and GR-2017-0216, page 52.

² *Amended Report and Order*, Case No. ER-2019-0374, pages 76 through 84.

³ *Spire Missouri, Inc. v Pub. Serv. Comm'n*, 618 S.W.3d 225, 233 (Mo. Banc 2021). Specifically, the court stated, "Generally, ratepayers benefit from rate cases because they have an interest in ensuring the financial well-being of the utilities that serve them. Therefore, ratepayers justly and reasonably can be expected to pay a utility's expenses in bringing such a case. But this does not mean there cannot be limits. A utility cannot spend any amount it pleases secure in the knowledge or expectation that ratepayers will foot the bill, particularly when those expenses include items seeking to subordinate ratepayers' interests to those of the utility's investors. Here, even assuming there was no basis in the evidence to reject the presumption of prudence with respect to one or more of Spire's rate case expenses, the PSC did not err in its decision to exclude a portion of those expenses in setting "just and reasonable" rates because they served only to benefit shareholders and minimize shareholder risk with no accompanying benefit (or potential benefit) to ratepayers."

1 Q. Was the rate case expense sharing testimony in Empire's ER-2019-0374 case
2 similar to the arguments in the current case?

3 A. Yes. The circumstances, and the arguments, were similar in that rate case.
4 In ER-2019-0374, Staff recommended assigning 50% of discretionary rate case expense to
5 shareholders and Empire argued against applying a sharing mechanism to consultant costs.
6 The Commission recognized that Empire's shareholders stood to benefit from the many issues
7 raised and litigated by Empire including the rate of return, the continuation of the FAC,
8 regulatory mechanisms, incentive compensation packages, and other issues. Because of this,
9 and other reasons that are still applicable in this case, the Commission required Empire's
10 shareholders to cover 50% of the rate case expense. I have attached the portion of the
11 Commission's *Amended Report and Order* in ER-2019-0374 that addresses rate case expense
12 sharing as Schedule NB-s1.

13 Q. In the current case, did Empire hire consultants to advocate for the
14 shareholder's interest?

15 A. Yes. Empire obtained the following rate case consultants:

- 16 - Mr. Daniel Dane advocating for Empire's capital structure and return on
17 equity,
- 18 - Mr. James A. Fallert sponsoring Empire's adjustments for pensions, other
19 post-employment benefits, and supplemental executive retirement plans.
- 20 - Mr. Eric Fox to support weather and customer sales normalization,
- 21 - Mr. Timothy Lyons sponsoring Empire's class cost of service and rate
22 design, and
- 23 - Mr. John J. Reed discussing fuel adjustment clause recovery

1 Q. Are portions of Empire's current rate case request designed to benefit the
2 shareholder's interest?

3 A. Yes. Empire's direct case argues for:

4 - Discrete Adjustments to capture the cost of:

- 5 ○ Water usage at the state line plant,
- 6 ○ The capital and expense costs of cybersecurity,
- 7 ○ Additional employees,
- 8 ○ Measurement of the unprotected excess accumulated deferred
- 9 income tax balance, and
- 10 ○ Customer First operation and maintenance expense,
- 11 ○ Shareholder-friendly changes to the fuel adjustment clause,
- 12 an accounting authority order for new natural gas investment,
- 13 ○ A new tracker for environmental expenses at Empire's wind farms,

14 **DEMAND SIDE MANAGEMENT COST RECOVERY**

15 Q. What are Demand Side Management ("DSM") expenditures?

16 A. As stated in my direct testimony, DSM Program expenditures represent
17 Empire's costs to implement active utility control over some portion of demand for electricity.
18 Some examples of these costs are expenditures for the "interruptible program," industrial
19 rebates, Low-Income Weatherization, and the associated administrative costs. This ability to
20 reduce or shift demand through these programs is a benefit for ratepayers.

21 Q. What is DSM cost recovery?

22 A. DSM cost recovery is the process of amortizing the costs of maintaining these
23 programs over time to match expense with the benefits of the program.

1 Q. How is rate base calculated for DSM?

2 A. In prior Empire rate cases, the rate base amount represents the program costs
3 incurred – less amortizations recorded as of the cut-off period. This is also referred to as the
4 unamortized balance. In its direct case, Staff supported an unrecovered balance to include in
5 rate base calculated as of the update period, September 30, 2024, and amortizing the balance
6 through expense over a six-year period.

7 Q. Does Empire agree with this methodology?

8 A. No. Empire witness Charlotte Emery lists two points of disagreement with Staff.

9 1. Staff included Interruptible Service Credits in the DSM asset and
10 amortization which Empire has proposed to remove from the DSM
11 program. Staff discussed this and understands that Empire is proposing
12 a three-year amortization for the deferred interruptible service credit
13 program to fall in line with other amortizations.⁴

14 2. Staff did not make an adjustment Empire made to correct an error Empire
15 identified. Emery claims that without this adjustment amortization could,
16 “misrepresents the timing of cost recovery”.⁵ In discussion with Empire
17 to clarify the nature of this adjustment, Staff understood that this error
18 was an understatement of a 2021 balance which, had it been properly
19 recorded, would have properly included additional cost recovery through
20 the EECR revenue.⁶

21 Q. How would you address these disagreements?

⁴ Rebuttal Testimony of Charlotte T. Emery page 12, line 20-page 13, line 6, Case No. ER-2024-0261

⁵ Rebuttal Testimony of Charlotte T. Emery page 12, line 20-page 13, line 6, Case No. ER-2024-0261

⁶ Weekly Liberty Discussion with Staff via Microsoft Teams, August 27th, 2025.

1 A. Firstly, interruptible service credits are amortized over a six-year period to
2 reflect Commission guidance from a prior rate case for the demand side management program.⁷
3 The Commission's Report and Order approved a stipulation submitted by the parties with the
4 following paragraph:

5 Empire will continue amortization for the DSM program costs incurred
6 after the end of the Regulatory Plan and prior to any program
7 implementation under MEEIA for a total term of six years.
8

9 Staff intends to honor the agreement and continue the amortization of these balances
10 over six years.

11 Secondly, due to an internal error, in 2024 Empire increased the balance of its DSM asset to
12 reflect interruptible service credits it had issued during 2022 without applying an amortization
13 to the balance. In its rebuttal testimony, Empire asserts that Staff has incorrectly included an
14 amortization of this portion of the asset from 2022 through the current date.
15 Empire states that its position correctly aligns regulatory treatment with the actual accounting
16 entries so is sound ratemaking and leads to an accurate revenue requirement.

17 Q. What effect does Empire's position have on the revenue requirement?

18 A. Compared to the revenue requirement that results if an error was not made,
19 Empire's position inflates rate base and increases ongoing amortization expense.
20 Both of these lead to an increase in the final revenue requirement. It is more appropriate to not
21 increase rates charged to customers because Empire's accounting personnel made a mistake.
22 In other words, if Empire had recorded the cost correctly and amortized the asset in between
23 rate cases, its recommended revenue requirement would be lower.

⁷ Report and order File No. ER-2014-0351 item 20.

ONGOING AMORTIZATION TRACKER

Q. What is the purpose of the amortization tracker as proposed by Staff in this case?

A. The purpose of the amortization tracker is to identify assets and liabilities that hold one-time costs that have been approved for amortization in a rate case. For example, Empire was granted a tracker for the Riverton 12 operation and maintenance (“O&M”) expense in Case No. ER-2014-0351. This tracker was discontinued in Case No. ER-2021-0312. Staff witness Jared Giacone addresses the Riverton 12 tracker in his direct testimony. Since this tracker has ended, it is necessary to track any over collection ratepayers have overpaid for consideration in Empire’s subsequent rate case. Similarly, over-refund of Empire’s liabilities will be captured for future consideration.

Q. What will be required for the amortization tracker to function?

A. In order to capture the over or under recovery of these costs, the parties will need to know the amount of amortization expense included in the current revenue requirement for each asset and liability.

Q. Is this accounting methodology substantially the same as other tracking mechanisms established for Ameren Missouri, Evergy Metro, Evergy West, and Missouri American Water?

A. Yes. The overall goal of this tracking mechanism is dollar for dollar recovery from, or return to, ratepayers.

Q. Does this conclude your surrebuttal / true-up direct testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Request of The Empire)
District Electric Company d/b/a Liberty for)
Authority to File Tariffs Increasing Rates)
for Electric Service Provided to Customers)
in Its Missouri Service Area)
Case No. ER-2024-0261

AFFIDAVIT OF NATHAN BAILEY, CPA

STATE OF MISSOURI)
)
COUNTY OF Jackson)
)
 ss.

COMES NOW NATHAN BAILEY, CPA and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Surrebuttal / True-Up Direct Testimony of Nathan Bailey, CPA*; and that the same is true and correct according to his best knowledge and belief.

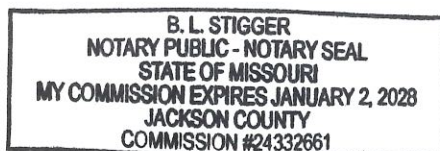
Further the Affiant sayeth not.




NATHAN BAILEY, CPA

JURAT

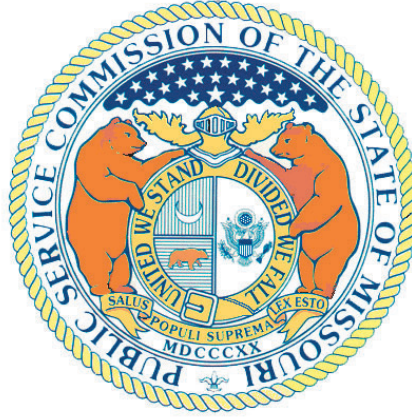
Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Jackson, State of Missouri, at my office in Kansas City, on this 15th day of September 2025.





Notary Public

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)

File No. ER-2019-0374
Tariff No. YE-2020-0029

AMENDED REPORT AND ORDER

Issue Date: July 23, 2020

Effective Date: August 2, 2020

debit card. As bank fees are already recovered in the cost of service, credit card transaction fees should be similarly treated. OPC's argument that 75 percent of Empire's customers who do not use credit cards will pay for the 25 percent who do is not persuasive given that the number of payments by credit card are increasing and the elimination of the credit card transaction fee effectively removes a barrier to more customers paying by credit card. The Commission finds that credit card fees should be included in the Company's revenue requirement so that individual fees are no longer required.

The Commission finds that the appropriate amount of credit card fees to include in Empire's revenue requirement is \$1,165,283 based on the test year period.

The Commission additionally finds it reasonable to order Empire to perform the following tasks: (1) track performance and savings to the Company and its customers from this initiative; (2) monitor the level of customers using the credit card option, whether the number of payments by credit card increases, and whether eliminating a fee to pay by credit card results in savings to the customer, to the Company, or to both; and (3) state how the Company will inform customers that there is no fee to pay their bill by credit card.

7) Rate Case Expense

Findings of Fact

204. Rate case expense is defined as all incremental costs incurred by a utility directly related to an application to change its general rate levels. These applications are usually initiated by the utility, but rate case expenses may also be incurred as a result of the filing of an earnings complaint case by another party. The largest amounts of rate case expenses usually consist of costs associated with use of outside witnesses,

consultants, and external attorneys hired by the utility to participate in the rate case process.²⁸⁷

205. OPC recommends allowable rate case expenses be normalized over three years, because Empire generally files rate cases every three years.²⁸⁸

206. Staff recommends allowable discretionary rate case expenses be normalized over two years.²⁸⁹

207. Empire proposes including an annualized amount of prudent rate case expense and amortizing it over a period of two years.²⁹⁰

208. Empire has incurred expenses for outside consultants in this rate case.²⁹¹

209. Empire is required to submit a depreciation study every five years. Empire submitted a depreciation study in File No. ER-2016-0023, Empire's last rate case, which is within five years of this rate case.²⁹² It is appropriate to include a normalized amount, one-fifth of the study cost, in rate case expense in this case.²⁹³

210. Empire must perform a line loss study at least every four years. Empire performed a line loss study in 2018, which is within four years of this rate case.²⁹⁴ It is appropriate to include a normalized amount, one-fourth of the study cost, in rate case expense in this case.²⁹⁵ Neither OPC nor Empire oppose a four-year normalization for the line loss study.²⁹⁶

²⁸⁷ Ex. 101, Staff Direct Report, page 74.

²⁸⁸ Ex. 200, Conner Direct, page 6.

²⁸⁹ Ex. 101, Staff Direct Report, page 73.

²⁹⁰ Ex. 7, Richard True-Up Direct, pp. 13, 16-17; and Ex. 59 Rate Case Expense Workpaper of Sheri Richard.

²⁹¹ Ex. 101, Staff Direct Report, page 73.

²⁹² Ex. 101, Staff Direct Report, page 73.

²⁹³ Ex. 140, Niemeier Surrebuttal/True-Up, pages 8-9.

²⁹⁴ Ex. 140, Niemeier Surrebuttal/True-up, page 9.

²⁹⁵ Ex. 140, Niemeier Surrebuttal/True-up, page 9.

²⁹⁶ Ex. 201, Connor Rebuttal, page 2, and Ex. 6, Richards Surrebuttal, page 7.

211. Staff recommends assigning Empire's discretionary rate case expenses to both ratepayers and shareholders based upon a 50/50 split, full recovery of the depreciation study over five years, and full recovery of the line loss study over four years.²⁹⁷ Staff calculated \$71,676 in trued-up rate case expense normalized over two years.²⁹⁸

212. Rate case expense can benefit both ratepayers and shareholders. Through a rate case, the ratepayer is receiving the opportunity to be provided safe and adequate service at a just and reasonable rate and the shareholder is receiving an opportunity to receive an adequate return on investment.²⁹⁹

213. Rate case expense sharing creates an incentive and eliminates a disincentive on the utility's part to control rate case expenses to reasonable levels.³⁰⁰

214. Utility management has a high degree of control over rate case expense. Generally, the utility determines when, and how often, a rate case is filed. Attorneys, consultants, and other services can either be provided by in-house personnel or can be acquired from an outside party. Rate case expenses subject to a sharing mechanism do not include internal labor costs. Those are included in the cost of service through the payroll and are paid by ratepayers.³⁰¹

215. Empire says that applying a sharing mechanism to all consultant costs is inappropriate because it does not have an in-house rate design or cost of service

²⁹⁷ Ex. 101, Staff Direct Report, page 74.

²⁹⁸ Ex. 156, Bolin Supplemental, page 4 and Ex. 140, Niemeier Surrebuttal True-Up, pages 8-9.

²⁹⁹ Ex. 101, Staff Direct Report, page 74.

³⁰⁰ Ex. 101, Staff Direct Report, page 74.

³⁰¹ Ex. 101, Staff Direct Report, page 74.

department and must contract out for these services. Larger utilities have those in-house services and may recover those costs through rates.³⁰²

216. Empire argues that the filing of this rate case was not discretionary. According to Section 386.266.5(3), RSMo, Empire had to file a rate case with the effective date of new rates to be no later than four years after the effective date of the Commission order implementing its FAC, September 9, 2016.³⁰³

217. A FAC is a voluntary mechanism that Empire chose to request and chooses to seek continuation of in this case.³⁰⁴

218. Empire also argues that the concept of sharing rate case expense with shareholders is incorrect. Empire asserts that rate case expense is a cost of supplying service to its customers and therefore should be included in its cost of service.³⁰⁵

219. Not all rate case expense is a necessary cost of supplying service to customers. Some rate case expense produces direct benefits to shareholders that are not shared with customers, such as hiring an outside technical expert seeking a higher ROE.³⁰⁶

220. Empire's shareholders stood to benefit from many of the issues raised and litigated by Empire in this case. In this case, Empire has requested a rate of return of 9.95 percent,³⁰⁷ the continuation of its FAC,³⁰⁸ elimination of credit card transaction fees,³⁰⁹ a

³⁰² Ex. 5, Richard Rebuttal, page 34.

³⁰³ Ex. 5, Richard Rebuttal, page 33-34.

³⁰⁴ Ex. 129, Bolin Surrebuttal/True-up, pages 5-6

³⁰⁵ Ex. 5, Richard Rebuttal, page 34.

³⁰⁶ Ex. 129 Bolin Surrebuttal/True-up, pages 6-7.

³⁰⁷ Ex. 36, Hevert Direct, page 2.

³⁰⁸ Ex. 26, Lyons Direct, page 5.

³⁰⁹ Ex. 2, Baker Rebuttal, page 3.

weather normalization mechanism³¹⁰, LED lighting trackers,³¹¹ inclusion of various incentive compensation packages,³¹² and other items that Empire wants included in its cost of service.

Conclusions of Law

BB. The Commission has broad discretion to determine which expenses a utility may recover from ratepayers. The Missouri Supreme Court has stated that the Commission's statutory power and authority to set rates "necessarily includes the power and authority to determine what items are properly includable in a utility's operating expenses and to determine and decide what treatment should be accorded such expense items."³¹³ The Commission's authority extends to allocating an expense between certain classes or groups of ratepayers³¹⁴ and to requiring company shareholders to bear expenses the Commission finds to be unreasonable or unnecessary.³¹⁵

CC. Subsection 20 CSR 4240-3.160(1)(A) requires that a depreciation study be submitted with a general rate increase request unless Staff received these items during the three years prior to the rate increase request or before five years have elapsed since last receiving said items.

DD. To be able to continue or modify a rate adjustment mechanism, such as an FAC, 20 CSR 4240-20.090 (13)(B) requires a utility to have conducted a new line loss study. The end of the twelve month period of actual data collected for use in that study

³¹⁰ Ex. 22, Fox Direct.

³¹¹ Ex. 33, McGarah Direct.

³¹² Ex. 5, Richard Rebuttal, pages 24-29.

³¹³ *State ex rel. City of W. Plains v. Pub. Serv. Comm'n*, 310 S.W.2d 925, 928 (Mo. 1958). See also, *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm'n*, 408 S.W.3d 153, 166 (Mo. App. 2013).

³¹⁴ *State ex rel. City of W. Plains v. Pub. Serv. Comm'n*, 310 S.W.2d at 934.

³¹⁵ *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm'n*, 408 S.W.3d at 164-165.

must be no earlier than four years before the date the utility files the general rate proceeding seeking to continue or modify that rate adjustment mechanism.

EE. To be able to continue utilizing an FAC, Subsection 386.266.5(3), RSMo requires Empire to “file a general rate case with the effective date of new rates to be no later than four years after the effective date” of the Commission’s order implementing a FAC for Empire. Empire’s last request for an overall increase in rates for electric service was docketed as File No. ER-2016-0023 and the Commission order authorizing the continuation of Empire’s current FAC was effective September 9, 2016. A FAC is a voluntary mechanism.³¹⁶

FF. The Commission has previously found rate case expense sharing was just and reasonable. In a 1986 decision, *In the Matter of Arkansas Power and Light Company*, the Commission adopted Public Counsel’s proposed disallowance of one-half of rate case expense.³¹⁷ The Commission also acknowledged this authority in a number of other cases.³¹⁸

GG. The Commission has the legal authority to apportion rate case expense between ratepayers and shareholders. In File No. ER-2014-0370, involving Kansas City Power and Light Company’s request for a rate increase the Commission determined that rate case expense should be shared between the ratepayers and shareholders.³¹⁹ That decision was upheld by the Western District Court of Appeals, which found that “the remedy crafted by the [Commission] was a reasonable exercise of the [Commission’s]

³¹⁶ *State ex rel. KCP & L Greater Missouri Operations Co. v. Missouri Pub. Serv. Comm’n*, 408 S.W.3d at 164-165.

³¹⁷ Report and Order, File No. ER-85-265, 28 Mo. P.S.C. (N.S.) 435, 447 (1986),

³¹⁸ See, *In the Matter of Kansas City Power & Light Company*, Report and Order, File Nos. EO-85-185 and EO-85-224, 28 Mo. P.S.C. (N.S.) 229, 263 (1986), and *In the Matter of Missouri Gas Energy*, Report and Order, File No. GR-2009-0355, 19 Mo. P.S.C. 3d 245, 303 (2010).

³¹⁹ *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, Report and Order, File No. ER-2014-0370, issued September 2, 2015.

discretion and expertise in determining just and reasonable expenses to be borne by ratepayers.”³²⁰

Decision

In many ways rate case expense is like other common operational expenses that a utility must incur to provide utility services to customers. Since customers benefit from having just and reasonable rates, it is appropriate for customers to bear some portion of the utility’s cost of prosecuting a rate case. However, rate case expense is also different from most other types of utility operational expenses in that 1) the rate case process is adversarial in nature, with the utility on one side and its customers on the other; 2) rate case expense produces some direct benefits to shareholders that are not shared with customers, such as seeking a higher ROE; 3) requiring all rate case expense to be paid by ratepayers provides the utility with an inequitable financial advantage over other case participants; and 4) full reimbursement of all rate case expense does nothing to encourage reasonable levels of cost containment.³²¹

The evidence shows that Empire’s shareholders stood to benefit from many of the issues raised and litigated by Empire in this case. In this case, Empire has requested a rate of return of 9.95 percent, the continuation of its FAC, elimination of credit card transaction fees, a weather normalization mechanism, LED lighting trackers, inclusion of various incentive compensation packages, and other items that Empire wants included in

³²⁰ *In Matter of Kansas City Power & Light Co.’s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm’n*, 509 S.W.3d 757, 779 (Mo. Ct. App. 2016), reh’g and/or transfer denied (Nov. 1, 2016), transfer denied (Feb. 28, 2017).

³²¹ Amended Report and Order, File No. GR-2017-0215, page 52, issued March 7, 2018.

its cost of service. It was Empire's decision and entirely within Empire's power to pursue these issues, hire outside consultants to support issues, and to file this rate case.

Empire also argues that there should be no rate case expense sharing because Empire was required to file a rate case pursuant to Section 386.266.5(3), RSMo. This is a requirement tied to the implementation and continuation of Empire's FAC and the FAC is a risk management mechanism that primarily benefits Empire. Empire knew when it requested a FAC that it would have to file a rate case in four years.

Therefore, it is just and reasonable that the shareholders and the ratepayers, who both benefited from the rate case, share in the rate case expense. The Commission finds that in order to set just and reasonable rates under the facts in this case, the Commission will require Empire's shareholders to cover a portion of Empire's rate case expense. The Commission will assign Empire's discretionary rate case expense to both ratepayers and shareholders based upon a 50/50 split.

The Commission finds Staff's recommendation to normalize discretionary rate case expense over two years to be appropriate. Empire's proposal to amortize rate case expense would be treating it differently than other classes of expenses. OPC's recommendation of a three year normalization is inappropriate given Empire's intention to file its next rate case within a year.

Because conducting a depreciation study and line loss study are required by Commission rule, it is appropriate that ratepayers bare their full cost. However, since they are not required to be performed annually, it is not appropriate to include their full cost in rates in this case. The Commission finds that Empire should be allowed full

recovery of the depreciation study over five years and full recovery of the line loss study over four years, because that is the period set out in the rule for their frequency.

The Commission determines that the appropriate amount of rate case expenses to include in Empire's revenue requirement is \$71,676 annually, for two years. That amount includes the normalized cost of the depreciation study from the prior rate case, and the normalized cost of the line loss study.

8) Management expense

Findings of Fact

221. OPC asks the Commission to disallow officer (\$34,618) and management (\$3,673,266) expenses for Empire for a total amount of \$3,707,884, through the test year period.³²²

222. OPC states that Empire lacks formal policies and procedures regarding travel expenses, and these amounts should be removed to protect ratepayers from reimbursing Empire for expenses that do not help the company provide safe and adequate service to its customers. OPC calculated disallowances for local meals, excessive charges for travel, and gifts and celebrations for the company and employees.³²³

223. Among other officer expense charges that OPC identified as being partially allocated to Empire's rate payers are trips to Bermuda (\$904.32), Australia (\$268.77), and London and Peru (\$2,268.09) totaling \$3,441.17.³²⁴ Empire states that the Bermuda trip was never allocated to Empire or included in its cost of service.³²⁵

³²² Ex. 202, Conner Surrebuttal True-Up, page 4.

³²³ Ex. 200, Conner Direct, page 8.

³²⁴ Ex. 299, Conner Supplemental testimony, page 4.

³²⁵ Ex. 1018, Richard Responsive Supplemental, page 7.