CWIP CONSTRUCTION PERIOD

Q. Are you familiar with § 393.135 RSMo., as it pertains to new natural gas-generating units such as the natural gas-fired 440 MW simple-cycle gas turbine electric generating facility (Mullin Creek #2) for which EMM has filed an application with this Commission (Case No. EA-2026-0154) for a certificate of convenience and necessity ("CCN") to construct, install, own, operate, manage, maintain, and control?

A. Yes. It provides:

> **393.135. Charges based on nonoperational property of electrical corporation prohibited — exceptions, expiration. —** 1. Except as provided in subsection 2 of this section, any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.
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> 2. (1) An electrical corporation may be permitted, subject to the limitations in this subsection, to include construction work in progress for any new natural gas-generating unit in rate base. The inclusion of construction work in progress allowed under this subsection shall be in lieu of any otherwise applicable allowance for funds used during construction that would have accrued from and after the effective date of new base rates that reflect inclusion of the construction work in progress in rate base. The commission shall determine, in a proceeding under section 393.170, the amount of construction work in progress that may be included in rate base. The amount shall be limited by:
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> (a) The estimated cost of such project; and
> (b) Project expenditures made within the estimated construction period for such project.
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> Base rate recoveries arising from inclusion of construction work in progress in rate base are subject to refund, with interest on the refunded amount at the same rate as the rate of interest for delinquent taxes determined by the director of revenue in accordance with section 32.065, if, and to the extent the commission determines, in a subsequent complaint or general rate proceeding, that construction costs giving rise to the construction work in progress included in rate base were imprudently incurred or if the project for which construction costs have been included in the rate base is not placed in service within a reasonable amount of time, as determined by the commission. Rate base used to determine return deferred under subdivision (2) of subsection 3 of section 393.1400 shall include an offset for rate base that has

> been used to determine return included in base rates as a result of construction work in progress inclusion in rate base under this subsection. The offset shall apply from and after the in-service date of the asset that has been used to determine return included in base rates as a result of construction work in progress inclusion in rate base under this subsection.
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> *(2) This subsection shall expire on December 31, 2035, unless the commission determines, after a hearing conducted in 2035, upon a submission from an electrical corporation of an application requesting and demonstrating that good cause exists to extend the effectiveness of this subsection through December 31, 2045. The secretary of the commission shall notify the revisor of statutes when the conditions set forth for the extension of this subsection have been met.[4]

Q. If the Commission authorizes, will the Company be able to include CWIP for Mullin Creek #2 in rate base?

A. Yes, with limitations.

Q. What limitations?

A. The limits that are set out in state statute:

> The amount *shall* be limited by:
> (a) The estimated cost of such project; and
> (b) Project expenditures made within the estimated construction period for such project.[5]

Q. Has Staff interpretated the language "estimated construction period" previously?

A. Yes. In Case No. EA-2025-0299, The Empire District Electric Company d/b/a Liberty requested CCN authority to build a combustion turbine that was approximately 250 MW. Staff defined construction in that case as every potential aspect of the project, including design of the plant and procurement of equipment. The Commission approved a Stipulation and Agreement reached in that case. However, the statute clearly says CWIP is to be limited

[4] RSMo Section 393.135
[5] Section 393.135.2(1)(b), RSMo (emphasis added).

to "[p]roject expenditures made within the estimated the construction period for such project.[6]

Q. What is the definition of construction?

A. Black's Law Dictionary, the deluxe 11th edition, defines construction as "the act of building by combining or arranging parts or elements; the thing so built." Webster's third New International Dictionary defines construction as "the act of putting parts together to form a complete integrated object."

Q. What is your understanding of the statutory limitation on CWIP related to the estimated construction period?

A. Though I am not an attorney, I interpret this statutory limitation as referring to the Company's estimation of the project's active construction period, alone. Therefore, I propose using EMM's own project timeline of the construction period for the 440 MW simple cycle gas turbine (Mullin Creek #2) that is the subject of its pending CCN application.

Q. What is the Company's temporal estimation of the requested project's active period of construction?

A. I am not sure. The OPC has data requests still outstanding in this case and EMM's pending CCN case (Case No. EA-2026-0154) for EMM's project timeline. The OPC will provide an update on the construction period when it has better information from EMM.

[6] Ibid.

Q. Do you have any concerns related to EMM's request for CWIP recovery in this rate case?

A. Yes. I am concerned about whether EMM is requesting costs that are, by definition, ineligible for CWIP recovery in this rate case. EMM's own direct testimony filed by Mr. Ronald A. Klote at page 14 calls the turbine reservation fees "pre-construction costs." As pre-construction costs, they would not be eligible to be recovered as eligible CWIP construction costs in this case based on EMM's own characterization of when it is incurring them and, therefore, EMM should not be allowed to collect CWIP through rates in this case.

Q. Do you have any other concerns related to EMM's request for CWIP recovery in this rate case?

A. Yes. EMM now has a pending CCN application for Mullin Creek #2, the project for which it is requesting the Commission allow CWIP recovery in this rate case. The Commission has neither provided the limit on the project budget and construction period expenditures nor approved a CCN for the project, itself. If the Commission exercises its discretion to require EMM's customers to pay for CWIP, it is my understanding that those limits are required for the Commission to properly determine the limitations on EMM's CWIP recovery in this case.