

Empire’s application includes requests (a) through (e), and authority must be found for each request:²

- a. **Authorization to record its investment in, and the costs to operate, the Wind Projects as described in Empire Witness Mooney’s Direct Testimony, including a finding that Empire’s investment related to the Customer Savings Plan should not be excluded from Empire’s rate base on the ground that the decision to proceed with the Plan was not prudent.**

The Commission has the authority to approve how Empire records investments, including what items should be included in rate base and what parameters should apply to rate base decisions, pursuant to Sections 386.250 and 393.140, RSMo., subject to other statutory limitations such as the limitations on rate recovery for non-operational property imposed by Section 393.135, RSMo.

- b. **Authorization to create a regulatory asset for the undepreciated balance of the Asbury facility, as described in Empire Witness Sager’s Direct Testimony, so that it may be considered for rate base treatment in subsequent rate cases.**

The Commission has the authority to determine how a utility accounts for plant pursuant to Sections 386.250 and 393.140, RSMo. According to the Missouri Court of Appeals, “The PSC... remains the authority that determines when an item may be included in a different accounting period for the purpose of developing authorized rates.” *In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service v. Missouri Public Service Commission*, 509 S.W.3d 757, 769 (Mo. App. 2016).

- c. **Approval of depreciation rates as described in Empire Witness Watson’s testimony, so that depreciation can begin as soon as the assets are placed in service.**

² Application, EFIS No. 2, p. 9.

The PSC has the authority to approve depreciation rates pursuant to Sections 386.250, 393.140, and 393.240, RSMo.

d. Approval of the arrangements between Empire and affiliates necessary to implement the Customer Savings Plan, to the extent necessary.

DE has not taken a position on the Commission's authority to approve the requested affiliate arrangements, but reserves the right to take a position on this issue in its post-hearing briefs.

e. Issuance of an order that is effective by June 30, 2018, so that Empire can take advantage of a limited window of opportunity to bring these savings to customers.

The procedural schedule proposed by the parties and granted by the Commission would enable the Commission to meet this request.

Issue 2: Which of Empire's requests, if any, should the Commission grant?

DE supports a Commission determination that Empire's decision to pursue the wind projects is prudent. DE also supports a Commission order effective June 30, 2018 as requested. The Commission need not make a ratemaking determination in this case, but can make a finding of decisional prudence with regards to Empire's plan; determining that Empire's plan is appropriate does not require the Commission to relinquish its authority with respect to the prudence of costs incurred in pursuit of that plan, or to abdicate its authority over such matters as Certificates of Convenience and Necessity. DE does not take a position on the remaining issues regarding a regulatory asset for Asbury, what depreciation rates to approve, or the affiliate arrangements requested in issues (b), (c), and (d) and quoted under Issue 1 above.

Issue 6: What conditions, if any, should be applied to the Asbury Employees?

DE proposes a number of conditions in the pre-filed testimony of Mr. Martin R. Hyman to help protect Asbury employees and address the potential economic impacts of closing the Asbury facility. Those conditions include the following:

- Empire could pay for the full cost of employee relocation if an employee relocates within the state of Missouri to continue working for Empire or its affiliates;
- The Company should strive to provide displaced employees with opportunities to enter positions at Empire or its affiliates with no reduction in salaries, or, in the alternative, should offer retraining for another career;
- Empire could work with the Department of Economic Development – Division of Workforce Development to sponsor retraining opportunities for plant employees that seek employment outside of Empire or its affiliates, as well as to residents of the communities affected by the Asbury plant closure;
- Empire could provide a one-time contribution to local school districts to both mitigate the effects of lost property tax revenues and allow these districts to revise their budgets; and,
- The Company should pursue available federal funding opportunities for assisting communities surrounding coal-fired power plants, to the extent applicable.³

Issue 9: Should there be any requirements associated with potential impacts of the Wind Projects on wildlife? If so, what requirements?

No additional wildlife-related requirements should be imposed by the Commission in this proceeding. Wildlife requirements associated with the wind projects should be addressed by agencies with the authority and expertise over wildlife issues, such as the U.S. Fish and Wildlife Service. According to Empire’s witness, Mr. Blake Mertens, wildlife “impacts are fully taken into

³ Hyman Rebuttal Testimony, pp. 12-13.

account during the extensive environmental and biological studies that will be completed before placement of turbines is finalized and construction is allowed to begin.”⁴ Mr. Mertens also states that Empire “intends to follow the U.S. Fish and Wildlife Service’s Land-Based Wind Energy Guidelines and other siting guidelines as applicable.”⁵ The Division of Energy supports Empire’s decision to conduct extensive environmental and biological studies before construction, and to follow the U.S. Fish and Wildlife Service’s guidelines.

WHEREFORE, the Division of Energy respectfully offers the above statement of its position on certain issues, and retains the right to take future positions on these and other issues as the case progresses.

Respectfully submitted,

Marc Poston

Marc Poston, MBN #45722
Senior Counsel
Department of Economic Development
P.O. Box 1157
Jefferson City, MO 65102
(573) 751-5558
marc.poston@ded.mo.gov
**Attorney for Missouri Department of Economic
Development – Division of Energy**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 4th day of April 2018.

Marc Poston

⁴ Mertens Surrebuttal Testimony, p. 13.

⁵ *Id.*